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ABSTRACT

The latest Elementary and Secondary Education Act reauthorization, the No Child Left Behind Act of 2001, includes new standards, testing, and sanctions provisions designed to bring better performance and new accountability for that performance to local schools. The accountability ingredients in the new law were mostly not new to the 2001 debate but were combined in a fresh way. President Bush and members of Congress achieved a legislative victory by hewing to the common ground it was not clear both parties still shared. To do so, some issues of accountability--notably, a strong role for national standards and testing on the one side, and market-based choice programs on the other--were avoided. Accountability is more defined than it has ever been in federal law (perhaps in some areas even unrealistically specific). Nonetheless, the meaning of the act will be defined in practice in the states and in the regulations promulgated by the Department of Education in the months to come. It is ultimately in the implementation process that a route will be chosen toward accountability, or toward avoidance. (Author/SM)

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Education Policy and Governance

Accountability and Avoidance in the Bush Education Plan: The 'No Child Left Behind Act of 2001.'

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ACCOUNTABILITY AND AVOIDANCE IN THE BUSH EDUCATION PLAN: THE 'NO CHILD LEFT BEHIND ACT OF 2001.'

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ABSTRACT

The latest Elementary and Secondary Education Act (ESEA) reauthorization, the No Child Left Behind Act of 2001, includes new standards, testing, and sanctions provisions designed to bring better performance and new accountability for that performance to local schools. The accountability ingredients in the law were mostly not new to the 2001 debate, but were combined in a fresh way; President Bush and members of Congress achieved an impressive legislative victory by hewing to the common ground it was not clear both parties still shared. To do so, some issues of accountability – notably, a strong role for national standards and testing on the one side, and market-based choice programs on the other – were avoided. Accountability is more defined than it has ever been in federal law (perhaps in some areas even unrealistically specific); nonetheless, the meaning of the act will be defined in practice in the states, and in the regulations promulgated by the Department of Education in the months to come. It is ultimately in the implementation process that a route will be chosen towards accountability, or towards avoidance.

It was how government works in the textbooks: ringed by smiling members of Congress and Cabinet secretaries, the President of the United States was putting his pen to paper and changing the law of the land. "Today begins a new era, a new time in public education in our country. As of this hour, America's schools will be on a new path of reform, and a new path of results," the President said.

The date was January 8, 2002, and the law was the "No Child Left Behind Act of 2001," a six-year reauthorization of the Elementary and Secondary Education Act (ESEA). The new act was touted as the broadest reworking of federal education policy since the original ESEA of 1965. And President George W. Bush liked the scene so much he repeated it three times that day, proudly putting on display the bipartisan legislative coalition that had passed "No Child Left Behind" by large margins in both chambers of Congress. At Hamilton High School in Ohio (in the district of House Education and the Workforce committee chair John A. Boehner), in Durham, New Hampshire, and in Boston, the president lauded Boehner and the other legislators present, including Rep. George Miller (D-CA) and Senators Judd Gregg (R-NH), Evan Bayh (D-IN), Michael DeWine (R-OH), and Edward Kennedy (D-MA) for their willingness to "focus on what was right for America" and for the substance of the law.[1]

The President's upbeat assessment was matched by that of his legislative partners, and by journalistic accounts. One dean of the Washington press corps, David Broder, said the law "may well be the most important piece of federal education legislation in thirty-five years." Members of Congress were happy to agree. Miller, the ranking Democrat on the Education and the Workforce Committee, concluded that "H.R. 1 makes fundamental, unprecedented reforms in ESEA programs." Boehner chimed in that this "landmark" law was his "proudest achievement" in two decades of congressional service. As the bill reached the Senate floor for final approval, Gregg called it "an exceptional piece of legislation," while Jeff Bingaman (D-NM) thought NCLB had the potential to "bring revolutionary change to our education system." Democratic icon Kennedy went even further: "This is a defining issue about the future of our

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[1] "President Signs Landmark Education Bill," Office of the White House Press Secretary (January 8, 2002), pp. 1, 2; Elisabeth Busmiller, "Focusing on the Home Front, Bush Signs Education Bill," *New York Times* (January 9, 2002). The full title of the law (P.L. 107-110) is actually "To Close the Achievement Gap with Accountability, Flexibility, and Choice, So That No Child is Left Behind"; in this paper I will use the short title or its bill numbers -- H.R. 1 in the House and S. 1 in the Senate. The final bill as passed was designated H.R. 1.

Nation and about the future of democracy, the future of liberty, and the future of the United States in leading the free world," he said. "No piece of legislation will have a greater impact or influence on that."[2]

Florid rhetoric is no stranger to the federal education debate; one can trace a regular cycle of denunciation (of the last set of reforms) and praise (of the new set) during the regular cycle of ESEA reauthorization over the past thirty-five years. "We called ours sweeping," said Clinton administration education secretary Richard Riley of the 1994 version; "Whoever passes the next reauthorization will call it sweeping."[3] Still, the plaudits of 2001 had a new theme: the central place of accountability in the law. As the President and others frequently stressed, the No Child Left Behind Act (hereafter "NCLB") was intended to require that states achieve measurable improvement in the academic performance of their students. "Accountability is the cornerstone of reform," Bush said as he sent his bill to Congress; and in his signing statement he called it "the first principle" of the new law. Boehner's fact sheet on the conference report shifted metaphors but argued the challenge had been met: "Accountability is the centerpiece. States have accepted billions in federal education aid but have never been held accountable for improving student achievement. Until now."[4] NCLB imposes new federal requirements for annual testing of students in grades three through eight while sanctioning districts and schools whose student populations as a whole or even in part did not meet specific measures of "annual yearly progress" on those tests. These mandates mark an important expansion of federal authority over states and local schools, which pay for more than ninety percent of education costs in the United States. As a result some observers concluded that NCLB marks a

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[2] David S. Broder, "Long Road to Reform: Negotiators Forge Education Legislation," *Washington Post* (December 17, 2001): A1. For similar press assessments, see Jonathan Alter, "Give the Pols a Gold Star," *Newsweek* (January 21, 2002): 45; Ronald Brownstein and James Gerstenzang, "Bush Signs Education Bill in a Major Bipartisan Achievement," *Los Angeles Times* (January 9, 2002): A6. For Congressional reaction, see, e.g., the *Congressional Record* [CR] of 12/13/01 (House) and 12/17-18/01 (Senate), for Congressional reaction specifically pages S13329 (Bingaman), S13419 (Kennedy), S13326 (Gregg), and H10103f (Boehner); the Miller statement is from his office's "The Leave No Child Behind Act, H.R. 1: Quality, Resources and Accountability for Our Schools," obtained on-line at *http://www.house.gov/georgemiller/eseainfo.html/*.

[3] Erik W. Robelen, "ESEA to Boost Federal Role in Education," *Education Week* 21 (January 9, 2002): 1.

[4] See "Remarks Prior to a Meeting With Congressional Education Leaders and an Exchange With Reporters, January 23," *Weekly Compilation of Presidential Documents, Administration of George W. Bush, 2001* (Washington, DC: GPO, January 29, 2001): 217; Boehner, "Fact Sheet: H.R. 1 Conference Report Highlights," House Education and the Workforce Committee, December 10, 2001.

"fundamental shift" in the way Congress and the president view federal aid to education.[5]

However, the accountability ingredients in the law were not new to the 2001 debate. It is true they were combined in a fresh way, and with a major expansion of the federal government's role (if not yet its investment) in local education. President Bush and members of Congress achieved an impressive legislative victory by hewing to the common ground it was not clear both parties still shared.

To do so, some issues of accountability - notably, a strong role for national standards and testing on the one side, and market-based school choice programs on the other - were avoided. NCLB creates statutory language more specifically defined than ESEA has ever been in federal law (perhaps, as in the twelve year deadline to bring all students to "proficiency," even unrealistically specific). Nonetheless, the meaning of the act will be defined in practice in the states, and in the regulations promulgated by the Department of Education in the months to come. It is in the implementation that a route will be chosen towards accountability, or towards avoidance. Given the federal government's relatively small role in financing public education – it is a "seven percent investor," as Bush education adviser Alexander "Sandy" Kress put it, trying to leverage change in a huge company owned by someone else - the effectiveness of federal proposals depend on how the states dispose. Congressman Tim Roemer (D-IN) would later note that NCLB was "a legislative success" (indeed, elsewhere he called it "almost a perfect process") but cautioned that "the jury is still out on whether it's a substantive success."[6] That jury will need to wait until the act is implemented.

The goal of this paper is to trace the legislative history of the accountability provisions of NCLB, keeping in mind that "accountability" itself is not a constant but a variable, used in different ways by different actors throughout the process. This is not a story that begins in 2001, or even with the 2000 presidential campaign of then-Governor Bush. Nor, as noted above, does it end in January, 2002; the current discussions about the scope and stricture of the law's regulations, and about its funding in future fiscal years, are vital to how seriously states and schools will take the new requirements and how much the new mandates will improve the

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[5] David Nather, "Student-Testing Drive Marks an Attitude Shift for Congress," *CQ Weekly* (June 30, 2001): 1560.

[6] Interview with Sandy Kress, April 15, 2002; interview with U.S. Rep. Tim Roemer, April 23, 2002; *Congressional Record*, December 13, 2001, p. H10096.

education of children heretofore left behind.

The following section will discuss the specifics of NCLB, then place them in the context of the broader education policy debate in the 1990s, to show the building blocks from which much of the 2001 law was constructed. How those components were assembled in White House, House, and Senate is the subject of Section III. The conclusion assesses the role of accountability, and of avoidance, in political decision-making throughout this process.

I. The Ingredients of Accountability

The emphasis on "accountability" in the debate over NCLB begs the question of what is meant by the term. In dictionary terms being accountable merely means being responsible or answerable. But in policy terms this must be expanded: who is answerable? For what? And how can this be enforced? After all, in education one could hold the students accountable for failing to learn (as high-stakes testing does in denying a high school diploma) or teachers, school administrators, or even states accountable for failing to teach. To do either one must know what was supposed to be learned, or taught. And to make it stick, as President Bush noted in January 2001, "An accountability system must have a consequence. Otherwise, it's not much of an accountability system." Chester Finn and Marci Kanstoroom therefore describe accountability as a "tripod" made up of standards; tests that measure whether those standards have been reached; and penalties for failure. Sandy Kress took a similar tack early in the debate, defining "real robust accountability" as "high standards, annual testing, and consequences, real consequences that flow from the measurement."[7]

On these three fronts, what does NCLB require? Table One summarizes the relevant provisions.[8] Note that "Title I" (specifically, Title I, Part A) is the largest funding vehicle within

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[7] "Remarks on Submitting the Education Plan to Congress, January 23," *Weekly Compilation of Presidential Documents, Administration of George W. Bush, 2001* (Washington, DC: GPO, January 29, 2001), p. 219; Chester E. Finn, Jr., and Marci Kanstoroom, "State Academic Standards," in Diane Ravitch (ed.), *Brookings Papers on Education Policy 2001* (Washington, DC: Brookings Institution, 2001), p. 133; Kress quoted in Siobhan Gorman, "Education: Step One - Grab the Center," *National Journal* (January 27, 2001). See also the essays in Diane Ravitch (ed.), *Brookings Papers on Education Policy 2002* (Washington, DC: Brookings Institution, 2002), a volume focusing on accountability issues.

[8] All quotations in Table 1 are from the language of the conference report accompanying H.R. 1 (House of Representatives Report 107-334, December 13, 2001), largely to be found in Sections 1111 and 1116. Other sources include "An ESEA Primer," *Education Week* 21 (January 9, 2002): 28; Siobhan Gorman, "Congress: Schooled in Survival," *National Journal* (December 15, 2001); Wayne Riddle et. al., *K-12 Education: Highlights of the No Child Left Behind Act of 2001*, CRS Report RL31284 (Washington, DC: Congressional Research Service, February 27, 2002).

ESEA, created as the centerpiece of federal aid to education in 1965. Its goal then (and now) was to improve the education of economically disadvantaged children. States may opt out of the NCLB requirements by refusing to accept Title I funding, but in fiscal year 2001, before the passage of NCLB, close to $9 billion was spent under Title I distributions to 90% of school districts in the United States.[9]

[TABLE ONE ABOUT HERE]

Keep in mind that the act is hugely complex, covering 681 pages of its conference report. But most broadly, NCLB requires that states receiving Title I money develop "challenging" academic standards, and that all students be required to reach proficiency with regards to those standards in reading and math within twelve years. It requires that students be tested in reading and math every year from grades three through eight, and again in high school, adding science to the mix by the mid-2000s; results must be reported for students as a whole but also disaggregated, broken down by race, economic status, and the like, in order to provide a check on schools with high overall averages but pockets of failing students. States must participate in the National Assessment of Educational Performance (NAEP) tests in two grades every other year; this may be used to provide a common benchmark for the rigor of the state tests.[10] "Report cards" must be distributed detailing the performance of each student subgroup by state and school each year.

Finally, NCLB imposes a series of corrective actions on schools and districts when they fail to make "adequate yearly progress" (AYP). Those actions range from technical assistance to the school in question to public school choice options, to the provision of Title I-funded "supplemental services" such as tutoring, to the restructuring of the school as a charter school or one run by a private provider such as Edison Schools. In return these accountability

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[9] Note however that because of the distribution formula aiming to hit as many districts (school and Congressional) as possible, Title I dollars traditionally have not reached about 20% of the poorest schools in the nation. Appropriation figures from Paul M. Irwin, *K-12 Education Funding: Authorizations and Appropriations for FY2002*, CRS Report RL31244 (Washington, DC: Congressional Research Service, January 11, 2002); for background see Eric W. Robelen, "Off Target?" *Education Week* 21 (September 5, 2001): 1.

[10] However, it is important to note that NAEP is not formally associated with states' measures of "adequate yearly progress" detailed below; that is, there is no formal requirement to compare state results on NAEP and their results on their own assessments and no penalties can be assessed against states who have poor showings on NAEP.

provisions, the law gives states some new flexibility in choosing how they spend federal monies. The categorical strings of ESEA are loosened somewhat for all districts, with about half of certain funds transferable between spending categories, and loosened a good deal in a very small number of cases (one hundred fifty districts nationally, of some 14,000 in total) by transforming federal money into a broad block grant so long as performance standards are met.

Overall, the requirements are a mix stressing what Rick Hess has called "coercive accountability" -- where student performance is measured across schools on a standardized basis, with educators thus pressured to improve their standings in the areas measured – with a dash of free-market accountability, where parents and students can freely choose schools based on the dimensions (safety, curriculum, etc.) they care about most.[11] The former approach, some have argued, requires that all students have equal "opportunity to learn," and therefore that school resources be equalized; this was a contentious issue in the 1994 reauthorization and appeared in disguise in 2001 when some legislators pushed unsuccessfully for a huge boost in federal funding for special education in order to free up local funds for other purposes.[12] The free-market approach was de-emphasized when true Title I "portability" -- a form of private school choice simply termed "vouchers" during the 2001 debate -- allowing students to use their share of Title I funds to attend any school of their choice, public or private, was removed from the bill in its early stages. Nor is there much direct responsibility placed here on students, *per se*; there is no requirement, for example, that they pass an exam to receive their high school diploma. The accountability is in requirements that must be met in return for federal money; and in information, with an eye towards driving parental choice (within the public schools) and perhaps more crucially parental demands of extant schools. Given that states have a fair amount of leeway in defining their standards and their AYP, the detailed reporting mandates in the law are an important means of shaming states into ensuring those standards are in fact "challenging."

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[11] Frederick M. Hess, *Revolution at the Margins: The Impact of Competition on Urban School Systems* (Washington, DC: Brookings Institution, 2002), pp. 233-7.

[12] "Lawmakers Renew and Revamp 1965 Education Act," *1994 Congressional Quarterly Almanac* (Washington, DC: CQ Press, 1995), 383-96; Anjetta McQueen, "First Bill Drafted Could Be Last to Clear as Special Education Funding Deadlock Stalls Bush's Priority Legislation," *CQ Weekly* (December 1, 2001): 2849.

Shopping for Ingredients

"Three days after taking office in January 2001 as the 43rd President of the United States, George W. Bush announced *No Child Left Behind*, his framework for bipartisan education reform," gushes the Education Department website in its executive summary of the NCLB. "Despite the unprecedented challenges of engineering an economic recovery while leading the Nation in the war on terrorism following the events of September 11, President Bush secured passage of the landmark NCLB Act."[13]

While the president's role in providing leadership to the legislative process should not be downplayed, it is important to note that the act hardly sprang full-brown from his brow. The ingredients in this legislative blend came from different sources, building cumulative momentum over a period of several years. The stress on standards derives from the 1980s, but most immediately from the 1994 reauthorization of ESEA and its companion legislation of the same year, the so-called "Goals 2000" Act. The idea of public and private school choice has been part of national debate since at least the Reagan Administration, re-emerged in 1991 and 1994, and took firm hold in the legislative debates of the 106th Congress in 1999-2000; likewise, the flexibility, assessment, and consequence language of NCLB has clear antecedents in the debates in Clinton's second term over ESEA and especially the first effort to reauthorize it in 1999. The idea of annual testing was inserted by then-Governor Bush on the 2000 campaign trail, building on his Texas experience.

The next sections will examine these areas to see how the process got to here, from "there," before turning to the 2001 legislative process in more detail.

A. Standards

The rise of the standards-based reform movement dates most prominently to the *Nation at Risk* report prepared by Reagan Education Secretary Terrel Bell's National Commission on Excellence in Education in 1983. President George H.W. Bush's 1989 education summit with the nation's governors in Charlottesville, Virginia, pushed the process along, agreeing upon broad performance goals for American schools and students. During the 1980s the process was largely state-driven. But in 1991, President Bush's "America 2000" legislative package included

[13] "The No Child Left Behind Act of 2001: Executive Summary," U.S. Department of Education, Washington, DC. Available via the internet at *http://www.ed.gov/offices/OESE/esea/exec-summ.html/*.

voluntary national testing tied to "world class" standards, a provision that led to the bill's death by Republican filibuster.

In 1993, President Bill Clinton – who as Governor of Arkansas helped lead the Charlottesville meeting – proposed a broad system of state grants to aid the development of state-level content standards. It was a voluntary system, however; and the final terms of the "Goals 2000" law passed in 1994 spoke of "strategies or standards" to avoid giving parents a basis for suing states that failed to meet a given standard. Further, the National Education Standards and Improvement Council (NESIC) the law authorized to draft national standards in math, science, English, history, geography, foreign languages, and the arts was never formed.[14] However, later in 1994 the Improving America's Schools Act (IASA) became law, re-authorizing ESEA for five years (to July, 2000) and tying for the first time state funding under Title I to the creation of content and performance standards for students receiving such aid. Those standards, further, were to be no less rigorous than a state's overall standards.

The notion of "adequate yearly progress" also became law in 1994, though it was rather vague, requiring only that AYP "result in continuous and substantial yearly improvement of each local educational agency and school sufficient to achieve the goal of all children served under this part meeting the State's proficient and advanced levels of performance."[15]

B. Assessments and Consequences

In IASA, academic progress was to be linked "primarily" to a series of tests for all students measuring proficiency levels in subjects of the state's choosing. One test was to be held sometime during grades 3-5, a second during grades 6-9, and a third in grades 10-12. States had a good deal of flexibility in setting their standards and in developing their

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[14] See Diane Ravitch, *Left Back: A Century of Battles over School Reform* (New York: Simon & Schuster, 2000), Ch. 11; Robert B. Schwartz and Marian A. Robinson, "Goals 2000 and the Standards Movement," in Diane Ravitch (ed.), *Brookings Papers on Education Policy 2000* (Washington, DC: Brookings Institution, 2000), pp. 173-205; "National Education Goals Set," *1994 Congressional Quarterly Almanac* (Washington, DC: CQ Press, 1995), pp. 397-99. The "Goals 2000: Educate America Act" is P.L. 103-227. Note that NESIC was eliminated by the new Republican majority in Congress in 1996.

[15] P.L. 103-382, Section 1111(b). See also "Lawmakers Renew and Revamp 1965 Education Act," *1994 Congressional Quarterly Almanac* (Washington, DC: CQ Press, 1995), 383-96.

assessments, and this work progressed slowly.[16] No national baseline was established. In his 1997 and 1998 State of the Union addresses, Clinton called for the creation of voluntary national tests, a move endorsed by business associations such as the Business Roundtable, the U.S. Chamber of Commerce, and the National Alliance of Business. However, Congress forbade their implementation. This was mainly because of Republican opposition to the idea of a national curriculum (nor was the GOP pleased with its usual allies in the business community for breaking ranks). Still, Democrats angry about education funding levels, especially in poorer districts, did not feel it was fair to assess districts that lacked the resources to come up to par; and given their traditional ties to teachers' unions, they worried about classroom time spent "teaching to the test." As Chester Finn observed at the time, "Republicans don't like 'national,' Democrats don't like 'test.'"[17]

Neither side seemed to harp on consequences, either. State standards were to be in place by the 1997-98 school year and assessments, along with final definitions of AYP, by 2000-01. The Secretary was authorized to penalize states that failed to meet these timelines by withholding the administrative portion of their Title I aid, but this was never done. School districts were authorized to take mild corrective action against schools failing to make AYP -- presuming of course AYP had been defined -- for example by withholding Title I money from that school. Again, this didn't happen. The Clinton administration was worried that cracking down on the states would rile the newly-Republican Congress, and until its last year in office focused on providing technical assistance to the states during the drawn-out development process.[18]

In a provision added during House debate by John Boehner, districts could also allow students at failing schools to move to other public schools within the district, though they were not required to do so. Grant programs were established that underwrote the voluntary

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[16] Indeed, it was not until April 2002, after the NCLB rulemaking process was underway, that the Department of Education could announce that all states were in compliance not with the 2001 reauthorization but with that of 1994. But even at this point, only twenty states had received final approval for both performance and content standards, with 27 more (including Puerto Rico) granted timeline waivers and an additional five (including DC) under binding "compliance agreements." See Eric W. Robelen, "States, Ed. Dept. Reach Accords on 1994 ESEA," *Education Week* 21 (April 17, 2002): 1.

[17] Quoted in Schwartz and Robinson, "Goals 2000," p. 178.

[18] Erik W. Robelen, "States Sluggish on Execution of 1994 ESEA," *Education Week* 21 (November 28, 2001): 1; interview with Undersecretary Eugene Hickok, U.S. Department of Education, April 10, 2002.

provision of public school choice through charter and magnet schools. Beyond this, consequences grounded in competition made as little headway at the national level as those grounded in standards. Academic debates over vouchers go back at least to the 1970s;[19] the Reagan administration had pressed for tax credits to subsidize private school tuition and for Title I portability, with little success. Bush likewise pushed vouchers in his 1991 proposals. During the 1990s, while some locales experimented with voucher programs of various sorts, these did not receive federal support. The issue proved hugely partisan whenever it arose, since each party was allied with one pole of the debate: Democrats with the unions and education professionals that saw vouchers as the beginning of the end of public education (and their jobs), and Republicans with the Christian conservatives who sought to avoid paying for an educational establishment from which they had opted out.

This latter group would be particularly successful at keeping the focus on "social" issues (school prayer, homeschoolers' rights) tangential to education reform. Clinton gave up on national testing, practically if not formally, and pushed instead issues like funds for teacher training, class size reduction, and school construction and renovation. He had some success in these endeavors through astute veto bargaining with the Republican leadership over the budget.

The theme of flexibility noted above did make a bow during the Goals 2000 debate with the creation of the Education Flexibility Partnership ("Ed-Flex"). This allowed nine states (increased to twelve in 1996) to waive statutory and regulatory requirements of certain ESEA and other education acts for a period of five years, in exchange for an approved Goals 2000 comprehensive improvement plan.[20]

By 1994, then, many of the themes of NCLB were already on the table, albeit in rather different substantive form than they would later attain. Since IASA was to expire in 2000, the 106th Congress provided a natural forum for variations on those themes to be aired. As we will see, congressional debate as early as 1999 provides the key vocabulary of the legislative

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[19] See Hess, *Revolution at the Margins*, pp. 2-4.

[20] See Section 311(e) of Goals 2000. The other major law included in state waiver authority is the Carl D. Perkins Vocational and Applied Technology Education Act.

shorthand, and to a large degree the actual legislative language, utilized in 2001. What was different in 2001 -- very different -- was the outcome.

C. The 106th Congress: New Proposals, New Democrats...

By the late 1990s, most states were developing academic standards and assessments. However, these were of widely varying quality; by 1997, for example, the American Federation of Teachers concluded that just seventeen states had "clear and specific standards" in English, math, social studies, and science. While forty-six claimed to be aligning their assessments with their standards, without strong standards this didn't mean much. Fewer than half the states had created the unified accountability systems for both Title I and non-Title I students foreseen by IASA.[21]

As a result, by this time a number of people in the educational issue network were coming to the conclusion that federal dollars needed to be tied more explicitly to measurable improvements in student performance.[22] These analysts cut a surprisingly wide ideological swath, and in 1998, Senators Slade Gorton (R-WA) and Joseph Lieberman (D-CT) agreed to convene meetings within the policy community to explore any common ground that might exist. Gorton was to invite Republican-leaning groups to the table, and Lieberman their Democratic opposite numbers.

The "think group" meetings ultimately included the Heritage Foundation, the Thomas Fordham Foundation, PPI (the Progressive Policy Institute, the think tank arm of the centrist Democratic Leadership Council), the civil rights-oriented Education Trust, and former Education Secretary William Bennett's Empower America. Diane Ravitch of NYU and the Brookings Institution, Lisa Graham Keegan of the Education Leaders Council (a group of state-level education administrators), former Clinton aide and University of Maryland professor Bill

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[21] See American Federation of Teachers, *Making Standards Matter 1999: An Update on State Activity*, AFT Educational Issues Policy Brief No. 11, November 1999; Margaret E. Goertz and M.C. Duffy, *Assessment and Accountability Systems in the 50 States: 1999-2000* (Philadelphia: University of Pennsylvania Consortium for Policy Research in Education, 2001). The essays in Ravitch (ed.), *Brookings Papers on Education Policy 2001*, give a broader view of this issue.

[22] An issue network is "a shared-knowledge group having to do with some aspect...of public policy," actively oriented towards influencing that policy. See Hugh Heclo, "Issue Networks and the Executive Establishment," in Anthony King (ed.), *The New American Political System* (Washington, DC: American Enterprise Institute, 1978), p. 103; Jeffrey Berry, *The Interest Group Society*, 3rd ed. (New York: Longman, 1997), Ch. 9.

Galston, and other prominent scholars also took part.[23]

Those meeting disagreed about the mechanisms that would most effectively increase states' accountability for (especially) their Title I dollars in ESEA. But they agreed strongly that more accountability was needed, and that a focus on dollar inputs and regulatory compliance needed to be augmented or even replaced with a focus on outputs, that is, on student performance. ESEA was trying to do too many things, many argued, and was doing few of them very well.

No full-blown bipartisan consensus emerged: one core difference was over how closely federal funding should be targeted and how much flexibility states and districts should attain over how they spent federal dollars. The New Democratic allies tended to feel more funding was needed, and that it should better aimed - with the small, "boutique" programs and regulatory requirements of ESEA reduced radically to refocus the law on its primary goal of improving poor students' academic performance. In April 1999, Andrew Rotherham of PPI summed up the key elements of this view in an influential white paper entitled "Toward Performance-Based Federal Education Funding." Rotherham argued that achieving educational equity meant equalizing not the dollars spent on children's education but rather the quality of that education, as measured by the results students achieved. He called Title I "an undertaking without consequences" for states and program administrators, and proposed that Congress make ESEA funding performance-based, setting benchmarks that states and localities would be required to meet and terminating aid to districts that failed to do so. He suggested, reminiscent of the "steer, don't row" metaphor of the reinventing government effort, that "the federal government should play the role of investor and catalyst rather than 'command and control' manager," targeting the poorest school districts and using national standards and testing to ensure all states were up to par. In all, five broad "performance-based grants" were proposed: Title I, Teacher Quality, English Proficiency, Public School Choice, and Innovation.[24]

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[23] Interviews/communications with William Galston, Nina Rees, Andrew Rotherham, and members of Sen. Lieberman's staff. See also Sen. Lieberman's discussion of this process in the *Congressional Record* of December 17, 2001, pp. S13399ff.

[24] Andrew Rotherham, *Toward Performance-Based Federal Education Funding: Reauthorization of the Elementary and Secondary Education Act* (Washington, DC: Progressive Policy Institute, April 1999); quotes are on pp. 6, 12.

Republicans in the group took this notion of flexibility combined with an *ex post* check one step further, stressing different policy recommendations. By September 1998 Republicans had pushed the "Dollars to the Classroom" bill (H.R. 3248) through the House on a mainly party-line vote of 212-198. H.R. 3248 combined thirty-one programs into a $2.74 billion block grant, building on the pilot "Ed-Flex" provisions of 1994 [25] Hoping the Senate would do more, Nina Rees and Kirk Johnson of the Heritage Foundation called for a "Super Ed-Flex" program. The idea was to revamp dramatically eighteen categorical grant programs within ESEA, allowing states to spend money more or less as they saw fit so long as academic performance met a standard jointly agreed to by the state and federal government.[26] But with President Clinton and the Democrats pushing a different set of issues – class size reduction, teacher training, school construction and renovation – 1998 ended in stalemate. Indeed, to the extent that Democrats sought to enhance targeting in Title I, the block grant approach was even less attractive.

All of these approaches were to surface in the 106th Congress. Republicans in both chambers pushed the block grant approach, Super Ed-Flex, with a bill called the Academic Achievement for All Act ("Straight A's" for short).[27] A pared-back version of this (limited to ten states) squeaked through the House in October 1999 by five votes. Despite a veto threat from President Clinton, the House also approved a new block grant combining funds for teacher training with the class-size reduction funding obtained in fiscal 1998.

A third bill reauthorizing Title I of ESEA passed the House by a broad majority in October 1999; and this bill, the so-called Student Results Act (H.R. 2), contained more than a kernel of the language that would find its way into NCLB two years later. On the House side the key player was George Miller, who proposed an amendment to the Straight A's bill that

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[25] Sue Kirchhoff, "Debate on Education Policy Crystallizes Campaign Themes," *CQ Weekly* (October 17, 1998): 2803.

[26] Nina Shokraii Rees and Kirk A. Johnson, *Why A 'Super' Ed-Flex Program is Needed to Boost Academic Achievement: Heritage Foundation Backgrounder 1261* (Washington, DC: Heritage Foundation, March 5, 1999).

[27] Sue Kirchhoff, "GOP Leaders Push to Convert $13 billion in Education Aid into Block Grants to States," *CQ Weekly* (June 26, 1999): 1548.

significantly tightened the AYP and related language in ESEA.[28] However, Title I was a more natural vehicle, and Miller ultimately agreed to shift the language to H.R. 2, working with the Republican leadership to give that bill real bipartisan appeal (the vote on engrossment was 358-67).

While states could still determine what constituted adequate yearly progress, H.R. 2 required that the state plan compare separately "the performance and progress of students" by disaggregated subgroups (race, LEP, etc.) and "include annual numerical goals for improving the performance of all [such] groups and narrowing gaps in performance between these groups." Even more critically, this had to be done by a time certain: the state plan had to ensure that each group of students would be proficient on each state assessment within ten years. Ninety percent of eligible students in the school had to take the tests, so that principals could not choose a misleading sample for assessment; for a state to make AYP, ninety percent of schools within the state had to do so. Both schools and states were required to produce annual report cards detailing their performance and progress.[29]

If a school did not make AYP for two consecutive years, it would be identified for "school improvement." Such schools would develop a plan for improvement, aided by the district. The latter could take more direct corrective action at this point and, if a school stayed in school improvement status for two years after its original identification, was required to do so. Such actions could include withholding funds or running the school from the district level, making "alternative governance arrangements" (the only example given was reopening the school as a public charter school), revamping the curriculum, or firing the staff. Public school choice could also be offered in addition to these options, with the district picking up transportation costs. More generally, school choice and charter schools were options on which schools or districts could spend Title I money at any time, though they were not required to pay

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[28] The language Miller proposed was developed with Sen. Jeff Bingaman (D-NM) in conjunction with the so-called "Title I Coalition" of civil rights-focused education groups led by the Education Trust. A similar grouping had worked on teacher quality issues in the 1998 higher education bill.

Note that by this point President Clinton also favored performance-based funding; in his 1999 State of the Union address, Clinton had called for linking ESEA funding to state achievement in a variety of areas (improving teacher quality, reconstituting failing schools, publicizing schools' statistical achievement through school "report cards," ending social promotion, and enforcing discipline codes). This may be the genesis of using NAEP as a formal check on state assessments.

[29] H.R. 2 of 1999 as engrossed by the House of Representatives, Section 1111(b)(2).

for transportation.[30] An amendment on the House floor to create a ten-state pilot program of Title I portability, or vouchers, failed by more than one hundred votes.

The three bills that reached the Senate (the Straight A's demonstration, the teacher training consolidation, and H.R. 2's revision of Title I) were combined there into an omnibus measure, S. 2, that was marked up in the Health, Education, Labor and Pensions (HELP) committee in early March. This reached the Senate floor in May. It included much of the language in the House bills, slightly expanding the Straight A's program to fifteen states over the resistance of Jim Jeffords (R-VT), the HELP committee chair. It also strengthened the public school choice program, requiring it to be offered, with transportation, in any school identified as needing improvement.

This latter language would be used in 2001; but the bill as a whole, it turned out, satisfied no one. Liberal Democrats sought a substitute amendment protecting extant programs, pushing the class size/school construction/teacher training triumvirate. This (along with an amendment to fund five years of the teacher training program) failed on a party-line vote. Conservative Republicans were also unhappy: led by Judd Gregg, they demanded a far larger Straight A's block grant and the inclusion of vouchers. "New Democrats," led by Lieberman, had yet a different version of ESEA consolidation, similar to the PPI proposal. Entitled the "Three R's" (for "Public Education Reinvestment, Reinvention, and Responsibility," S. 2254) it created five major grants from the fifty-plus then in place, raised overall funding by $35 billion over five years, kept the class size reduction program, and added $100 million for public school choice. S. 2254 took its accountability language largely from the Miller/Bingaman language of H.R. 2. At the same time Bingaman (himself not a New Democrat) pushed those provisions separately and ran into a buzzsaw of partisanship. The consensus Miller had achieved in the House could not be reached on the Senate side, and the Bingaman amendment was blocked in committee by party-line vote.

In the end no agreement was reached. "Old" and "new" Democrats clashed over the latter's defection ("you'd have thought we had launched a grenade in the caucus," one aide recalled). The Republicans liked the New Democrat bill in many respects but negotiations failed over the GOP insistence on Title I vouchers. (However, the language used in 2001

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[30] H.R. 2 of 1999, as engrossed by the House of Representatives, Section 112.

allowing the portability of supplemental services money was worked out during these talks.) In the end, the Lieberman amendment got just thirteen votes, and a long list of proposed riders, including a Democratic gun control amendment that Republicans wanted to keep from the floor, bogged down the overall bill. Soon the upcoming presidential election made a deal unattractive for both sides -- and so ESEA was not reauthorized. Instead, funding for its extant programs was simply rolled over for an additional year in the appropriations process.[31]

As the 106th Congress broke down in stalemate, Rotherham complained, "At the national level, the debate about how to address education has broken down along predictable and partisan lines" and urged that the New Democratic proposal be the basis for the new administration's first move on education reform.[32] Ironically, in a way it was.

D. ...and a "Compassionate Conservative"

As 1999 progressed, Republican Governor George Bush of Texas was on the presidential campaign trail, pitching himself as a "compassionate conservative." In education policy, the compassion was for the students, especially poor students, ill-served by the education system, hampered by what Bush frequently called "the soft bigotry of low expectations" and underperforming school bureaucracies. The conservatism lay in maximizing parental choice (including "voucherized" public funds for school choice programs including private schools) and local flexibility over how federal dollars were spent.[33] A strong federal role in education policy and even additional federal spending was nonetheless envisioned, putting him at odds with Republicans whose main focus was on keeping the national government out of local schools and, if possible, eliminating the federal Department of Education. ("Too often," Bush would later scold, "my party has confused the need for limited government with a disdain for government itself." Indeed, Bush would later lobby behind the scenes to ensure that a plank

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[31] A bipartisan expansion of Ed-Flex, allowing states to apply for waivers from federal regulations so as to encourage educational innovation, did become law.The "Ed-Flex" bill became P.L. 106-25. See "2000 Legislative Summary: ESEA," *CQ Weekly* (December 16, 2000): 2899.

[32] Andrew Rotherham, "The New Three R's of Education," *DLC Blueprint Magazine* (February 7, 2001).

[33] See, e.g., Bush's speech entitled "A Culture of Achievement," delivered in New York City on October 5, 1999, or that accepting the Republican nomination for the presidency on August 3, 2000.

calling for the department's abolition was dropped from the 2000 Republican platform.)[34]

For Bush, focusing on education had potential risks, since education had long been seen by voters as a "Democratic" issue. In July 1999, for example, a Pew Research Center poll found that by a margin of 52 to 29 percent voters trusted Democrats to do a better job on education. The very name of the Bush campaign white paper on the topic, "no child left behind," was cribbed from the slogan of the liberal Children's Defense Fund.[35]

However, Bush was very comfortable with the issue. While governor, he had built on his predecessors' policies to expand the Texas Assessment of Academic Skills (TAAS) program to annualize testing in reading and math at grades 3-8, as well as a "high stakes" exit exam starting in grade 10; testing was also done in writing, science, and social studies. Students could not graduate high school without passing TAAS exams, while teachers and administrators saw their own ca.eers tied to student performance. Since the mid-1990s TAAS scores had jumped up among all students, but particularly for blacks and Latinos, though some outside observers were skeptical about the validity of those findings.[36]

In any case, as Bush adviser Kress noted, "A lot of the foundation of the President's education goals were lived-out experiences while he was governor."[37] On the campaign trail his stress on education seemed to work: polls found no statistical difference between voters' assessments of Bush and Vice President Al Gore on this issue.[38]

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[34] Frank Bruni, "Bush Says G.O.P. Stresses Wealth at Expense of Tackling Social Ills," *New York Times* (October 6, 1999): A1; on the GOP platform see David Nather, "Finding Education's Center," *CQ Weekly* (January 13, 2001): 112.

[35] John Hassell, "Republicans Try to Shed 'Anti-Education' Image," *New Orleans Times-Picayune* (July 11, 1999): A8. The avowed mission of CDF (founded by Marian Wright Edelman, a close friend of Bill and Hillary Clinton) is "to leave no child behind." That phrase is now an officially registered trademark of the group, which was evidently not amused by Bush's use of it.

[36] "Overview, Student Assessment Division," Texas Education Agency, State of Texas; obtained from *http://www.tea.state.tx.us/student.assessment/about/overview.html/* on May 10, 2002. See also John Mintz, "'Texas Miracle' Doubted: An Education 'Miracle,' or Mirage?" *Washington Post* (April 21, 2000): A1; a later study by the Rand Corporation suggesting that national tests revealed far worse performance by Texas students received wide, if not uncontested, play. See Jim Yardley, "Study Casts Doubt on Texas Test Scores, and Gives the Democrats Ammunition," *New York Times* (October 25, 2000): A23.

[37] Kress interview.

[38] See, e.g., Dan Balz and Richard Morin, "'Education Voters' Pose a Tough Test: Poll Shows Gore, Bush Face a Conflicted Group," *Washington Post* (June 30, 2000): A1.

Developing these themes for the campaign was a policy staff of about fifteen, which also served as liaison to outside advisory groups. This included Bush's education adviser in Texas, Margaret La Montagne, and Kress, a Dallas attorney and school board member who had worked with Bush on revamping Texas' own accountability statutes, supported by Sarah Youssef (a former Heritage staffer who joined the campaign in June of 1999). Others vetting the proposal included well-known education policy experts Ravitch and Fordham Foundation president Chester Finn, along with former Education Secretary William J. Bennett and Indianapolis Mayor Stephen Goldsmith.[39]

Kress, as Bush liked to stress, was a Democrat. A DLC member, he was familiar with Rotherham's PPI paper and the 1999 Three R's bill (itself, as noted, similar in its accountability provisions to the House-passed H.R. 2), and borrowed widely from them. The result was a polygamous marriage of consolidation and performance-based funding -- to the notion of annualized testing in grades three through eight, and to a voucher program similar to that passed in Florida under the gubernatorial tenure there of Bush's brother Jeb. The latter proved the least popular in polls; still, to a predominantly Latino audience in Los Angeles, Bush argued that Title I programs had failed poor and minority students and that diverting funds to parents would give them needed options and force schools to improve.[40] In another major speech, at the Manhattan Institute in New York, Bush argued that "An 'age of accountability' is starting to replace an era of low expectations." He proposed that sixty ESEA grant categories be narrowed to five (slightly differently defined than in the Three R's.) "What I am proposing today is....a pact of principle," Bush said. "Freedom in exchange for achievement. Latitude in return for results. Local control with one national goal: excellence for every child."[41] Annual testing, he

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[39] Interviews with Kress, Sarah Youssef. Note that Margaret La Montagne is now Margaret Spellings. Others on the formal education advisory team included Douglas Carnine, a consultant to the Governor's Business Council in Texas; Lynne Cheney of the American Enterprise Institute; Carol D'Amico, an adviser to Goldsmith; Williamson Evers of the Hoover Institution; former Milwaukee school superintendent Howard Fuller; Eric A. Hanushek of the University of Rochester; Lance Izumi, a Reagan speech writer.

[40] Mark Barabak, "Bush Suggests Stripping Funds From Weak Schools," *Los Angeles Times* (September 3, 1999): A3; on poll numbers, see Balz and Morin, "'Education Voters' Pose a Tough Test:."

[41] See Bush, "A Culture of Achievement," transcript obtained from *http://www.manhattan-institute.org/html/bush_speech.htm* on April 27, 2002. The grants would revolve around: improving achievement among disadvantaged children (Title I); promoting fluency in English; training and recruiting teachers; encouraging character and school safety; and promoting innovation and parental choice. The main difference from Three R's was in the fourth of these, character education, though of course many of the details

reiterated at every campaign stop, was vital. And while he argued that these tests should be locally developed and under local control, he also proposed that states receiving federal funds should be required to participate in NAEP (at federal expense) as one means of verifying how well the state assessments were working.[42]

Bush, of course, would go on to win the election. Even before the Supreme Court finalized that result on December 12, transition work on education had begun in Washington, using private funds. Some of the transition staff worked on organizational issues, preparing briefing books for the yet-to-be-chosen appointees to the Department of Education; another group worked to translate the president-elect's campaign pledges into more concrete legislative proposals. This included Kress, La Montagne, Youssef, Nina Rees (a Heritage Foundation policy analyst who would later join Vice President Dick Cheney's staff), and Christine Wolfe (a House committee staffer who would join the Education Department in mid-2001), with help from Boehner's chief education aide, Sally Lovejoy. The policy initiative was necessarily created without much input from the Department of Education - in part because its substance was so closely linked to the president's campaign proposals, and in part because most political appointees in the Department had not been named, much less confirmed. Incoming Secretary Roderick R. Paige, while friendly with Bush from his days as superintendent of schools in Houston, had not been particularly involved in the formulation of the campaign platform or the drafting of the blueprint during the transition.

Bush made clear early on that education would be a priority when in late December he invited about twenty members of Congress to meet with him on the issue in Austin. Republican leaders -- Boehner, Gregg, Jeffords -- led the way, but New Democrats such as Bayh, Tim Roemer, and Zell Miller (D-GA) were also prominently featured. So was George Miller, whom

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within each category also varied.

[42] States could use another approved assessment at their own expense. They would get performance bonuses if they demonstrated progress in various areas (using NAEP scores but also other indicators such as SAT scores); states not making progress over five years would see a small portion (5% or so) of their federal funding redirected into a grant fund for charter schools. Gore also discussed tying finances to NAEP, though he wanted to use NAEP as a more formal standard of school and state progress. Note that because NAEP uses a sample of students within a state, using NAEP scores to evaluate individual schools (as Gore suggested) would require a large shift in the way it is conducted. Thanks to Sarah Youssef for providing fact sheets from the Bush campaign. See also Ronald Brownstein and Edward Chen, "Gore Education Plan Stresses Accountability; Vice President's Initiative Attempts to Counter One Pushed by Bush, with More Emphasis on Federal Input," *Los Angeles Times* (April 29, 2000): A16.

Bush courted and was soon calling "Big George." However, Ted Kennedy was conspicuously absent, making clear the president's intention to seek a Republican-New Democrat coalition. Warned explicitly that pushing hard on private school vouchers would put an end to that prospect, Bush gave his reassurances: vouchers were not make-or-break. Democrats were "satisfied, if not exuberant." It appeared that common ground could, indeed, be found.[43] "No Child Left Behind" began to take shape.[44]

As January began, and with it the 107th Congress, that shape was not a piece of draft legislation but a thirty page legislative "blueprint," including a six-page executive summary and a presidential foreword. The package closely tracked the president's campaign agenda.[45] It included his version of the consolidation of categorical grant programs; new content standards in history and science; grade 3-8 annual testing, and 4th and 8th grade NAEP participation each year; state and school report cards disaggregated by subgroup; and a requirement that adequate yearly progress be made by the "disadvantaged" students within any school receiving Title I funds (though at this point the blueprint did not explicitly mirror the level of disaggregation required in the school report cards). Requirements for "corrective action" when a school or district identified after one year as failing to make adequate progress continued to fail were not completely specified, but public school choice and later "exit vouchers" towards private school tuition or for supplemental services were to be included. Schools and states that succeeded "in closing the achievement gap" would receive funding bonuses from the federal government; those that did not, would be subject to losing a portion of their administrative funds under Title I. Title VII of the blueprint, entitled "Freedom and Accountability," and

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[43] Quote is from Roemer interview. Note that Lieberman was also absent -- recall that he had just run for vice president against the Bush-Cheney ticket. See Siobhan Gorman, "Education: Behind Bipartisanship," *National Journal* (July 14, 2001); Dana Milbank, "Bush Likely to Drop Vouchers," *Washington Post* (January 2, 2001): A1; David Nather, "Finding Education's Center," *CQ Weekly* (January 13, 2001): 112.

[44] It was not clear whether the president would seek first an omnibus education measure such as ESEA reauthorization or lead with more limited proposals that might pass quickly and build momentum for a broader bill. But it would be harder to trade issues (e.g., accountability for dollars, vouchers for annual testing) across discrete pieces of legislation. Further, the proposals had substantive linked: reading to testing, Head Start to sticky issues of reorganization, since Bush had proposed it be moved out of Health and Human Services to Education. As a result Boehner and others successfully urged a comprehensive approach. Interviews with Kress, Rees, Youssef; Milbank, "Bush Likely to Drop Vouchers"; Eric W. Robelen, "Bush Promises Swift Action on Education," *Education Week* (January 10, 2001): 1; "Smoothing the Transition," *Education Week* (January 10, 2001): 42.

[45] President George W. Bush, *No Child Left Behind* (Washington, DC: The White House, January 23, 2001).

presenting a program it called "Charter States," traced the broadest Straight A's proposal of 1999-2000 - it allowed states or school districts the option of entering into a direct agreement with the Secretary of Education that would relieve them from the regulations associated with categorical grant programs in return for establishing a five-year "performance agreement" designed to achieve specific gains in student performance.

The blueprint, in short, provided for the consolidation elements of the Three R's, plus H.R. 2's language on accountability and AYP, plus S. 2's school choice provisions, plus Straight A's, plus annual testing, a NAEP check, and vouchers. As a result, the response on Capitol Hill was generally positive. Bush "essentially plagiarized our plan," said one Lieberman aide, but as detailed above, many others in House and Senate could have made the same claim.[46]

III. The Blueprint Goes to Congress[47]

The decision to send a blueprint and not a draft bill to Congress was a measured one. There were practical considerations, especially of time -- if an education package was to be presented during the president's first week in office, there was barely a month between *Bush v. Gore* and the inaugural, and just a weekend during which the president's staff could call fully on the policy resources of government such as the Office of Management and Budget (OMB) and the permanent staff at the Department of Education. Before that, as noted above, only four or five staffers were working on the issue, for the most part not experts in the technical minutiae of statutory drafting.

But there were political concerns too. The White House gauged it had enough friends in the House and Senate to get a satisfactory bill to the floor. And given that the very first line of president's foreword to the blueprint stated that "*bipartisan* education reform will be the cornerstone of my Administration," a collaborative process was foreseen; presenting specific language might be seen as presumptuous.

Further, as several Democratic staffers would later comment, this approach had real

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[46] Aide quoted in Milbank, "Bush Likely to Drop Vouchers."

[47] The story here is derived from Congressional documents, news accounts, and from more than fifteen interviews with executive branch personnel and members of Congress and their staff (in both House and Senate, and from both sides of the partisan aisle). Where anonymity was requested I have honored that request; any uncited details or quotes in the narrative below are drawn from these interviews.

advantages for the president. As one put it: "This was great political strategy. When you put out legislation, then you're fighting for colons and sentences and subheadings. The White House had orders: don't get bogged down in details." Instead, what the president cared about were the core themes of his platform, especially - perhaps solely, some conservative Republicans would later gripe -- early childhood literacy programs and annual testing. What was in the tests, and how they were used, was less critical.[48] As noted above, vouchers were less critical still; this had been signaled by the president since December, and was inevitable if bipartisanship were to be maintained. While Bush did not back away from vouchers in his remarks of January 23, he did not say he would veto a bill that did not include them. In an interview that week, Kress stressed that Bush would not move away from "flexibility" and "accountability," but did not define his terms.[49]

No doubt both parties suffered from the legislative equivalent of the Vietnam syndrome, stemming from then-First Lady Hillary Clinton's proposed bill to reform health care in 1993. At that time, majority Democrats had refused to allow the Clinton administration to send up a list of guiding principals, insisting instead on a detailed draft - and then sniping at those details until the bill sank of its own weight in mid-1994. Republicans in the 107th Congress did not make the same demand. Nor did Bush set up a large "war room" to deal with education policy as the Clintons had created a separate "Intensive Care Unit" within the White House to handle health care.[50] Instead, Kress took a temporary assignment as senior adviser to the president and set up shop in the Domestic Policy Council under La Montagne, with Sarah Youssef (now associate director of the DPC) assigned to work with him.

As it was, the Bush administration had set itself up to claim credit at the end of the process while leaving Congress to squabble over the hard choices. This is not to deny the key

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[48] Bush blueprint, emphasis added. On the voucher issue, see the president's remarks to the press of January 23. Cong. Todd Platts (R-PA), a Republican on the Education committee who opposed vouchers, expressed the sense of others interviewed in noting that he discussed the issue with the President at a January reception and received "no real arm-twisting." (Interview, February 12, 2002.) On Republican griping, see Kerry L. Kantin, "House Conservatives Chafe at Compromise on Education Bill," *The Hill* (May 6, 2002); David Nather, "Democrats Leaving Their Stamp on Bush's Education Bill," *CQ Weekly* (May 12, 2001).

[49] Gorman, "Step One: Grab the Center."

[50] See Haynes Johnson and David S. Broder, *The System: The American Way of Politics at the Breaking Point*, paperback ed. (Boston: Little, Brown, 1997), p.173; on ICU see George Stephanopoulos, *All too Human: A Political Education*, paperback ed. (Boston: Little, Brown, 1999), p. 198.

role of presidential leadership in the overall process, nor the many hours the White House would spend negotiating key points and tracking the progress of the bill. But as Kress put it, the president wanted "to let the legislative process take place within the Congress."[51] If the bill died, the fingerprints on the body would be Congressional and, hopefully, Democratic.

The Senate: From Alliance Politics to "Hell Week"

Though drafting began quite quickly in both chambers, for ease of exposition it is useful to start tracing that process on the Senate side, since that body was the first to hold a formal hearing on the president's plan. Recall that the Senate, as the 107th Congress began, was split 50-50 between Democrats and Republicans. The latter were able to organize the body after January 20 because of the Vice President's role as president of the Senate, and Jim Jeffords retained the HELP Committee chair.

From the administration's point of view this was unfortunate. Jeffords had produced the ESEA bill in the 106th Congress that was too far left for Bush stalwarts like Judd Gregg, and it was feared that Jeffords would ally with ranking Democrat Ted Kennedy and the other liberals on the committee to produce a bill that mirrored the Clinton priorities: money for class size reduction, teacher training, and school construction -- more money and no change, as they saw it. Instead, Kress worked a shrewd brand of alliance politics, dealing mainly with Gregg, on the one hand, and cultivating the New Democrats on the other, using the pressure of those discussions to lure Kennedy to the table. After all, thirteen Democratic votes had not done much in 2000, but added to fifty Republicans they reached a magic threshold: the sixty Senators needed for cloture.

As noted above, Kennedy had not been invited to Austin. But as a consummate dealmaker, and perhaps unnerved by the prospects of a major bill in his jurisdiction being achieved without his input, he wanted to be part of education reform. In fact he needed to be, the New Democrats told Kress: they would find it hard to maintain their bloc if Kennedy were fiercely opposed, unless the bill met their preferences so exactly as to make it unpalatable to some Republicans -- both options for failure on the Senate floor. "The New Democrats were crucial for applying pressure on Kennedy," commented a Republican Senate aide, "but the bill

[51] Kress interview.

wouldn't have happened without him." Bush and Kress began to woo the senior senator; and Kennedy, for his part, "bought himself into the game" by agreeing that some form of program consolidation and "Straight A's" flexibility, along with some form of supplemental services language, would be part of the Senate bill. Some Democrats griped he had given too much; some Republicans felt they could have gotten more.[52]

The HELP committee held its first hearing on NCLB on February 15, with Education Secretary Rod Paige the sole witness. Paige confirmed that no legislative language would be forthcoming from the administration. Under pressure from the GOP leadership to have a bill on the floor quickly, preferably by March 1, the committee used the 2000 version of "Three R's" as the base language for consideration. On March 8, a 20-0 vote approved S. 1, the "Better Education for Students and Teachers" (BEST) Act of 2001.

The unanimity was misleading; as *CQ Weekly* noted, it "happened only because the big disputes have been put off until the bill reaches the Senate floor." As it stood the bill lacked any provision for vouchers (which Gregg hoped to add), Straight A's, money to reduce class size or for school repair, or, in the view of some, enough money period. Christopher Dodd (D-CT) complained: "If you don't have the resources there, you can test until you're blue in the face."[53] Given that the Bush administration had not yet provided its recommended revisions to the FY 2002 budget, and would not until April, deferring these matters seemed the only way to keep the process moving. The bill did include much of the assessment and standards language discussed in the 106th Congress, though Jeffords did not support it.

The formal committee process was somewhat irrelevant in any case. Jeffords was still chair, but Gregg clearly called the Republican shots (backed up, in staff-level meetings, by staffers for Majority Leader Trent Lott). An informal negotiating group arose, including essentially four factions in a core group of eight or ten: conservative Republicans, led by Gregg (and including Bill Frist of Tennessee and Tim Hutchinson of Arkansas); "New Democrat" moderates led by Lieberman and Bayh; the regular Democratic caucus, led by Kennedy, Dodd, and Bingaman; and, somewhat on the fringes, the moderate Republicans, led by Jeffords

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[52] Interviews; see also Broder, "Long Road to Reform"; Gorman, "Behind Bipartisanship"; David Nather and Mary Agnes Carey, "Health, Education: Assertive Dealmaker," *CQ Weekly* (May 26, 2001): 1230.

[53] David Nather, "Panel Easily Approves Education Bill, Deferring Fights on Vouchers and 'Charter States' to Senate Floor," *CQ Weekly* (March 10, 2001): 540.

(including Susan Collins of Maine). It was the job of this group, meeting at night, to work out a substitute amendment to the committee bill, providing a new base for Senate floor consideration. A deal was worked out to provide a demonstration version of Straight A's/charter states, covering seven states and twenty-five school districts. Supplemental services portability was also revived, to stand as a partial substitute for the absence of private school vouchers.[54]

Defining what kinds of tests could be used proved more difficult. Early drafts of the Senate bill allowed school districts within a state to use different tests, and for different sorts of tests to be used in different grades, so long as the Department of Education approved. Advocates argued this would undercut the whole point of the testing, which was to make valid comparisons across schools and across years, and eventually won out.[55]

In late April came "hell week," as one Senate staffer colorfully described it. Governors, led by John Engler of Michigan, were pressuring the White House hard to weaken the AYP requirements in the bill. To that point, the Senate had language similar to the House, requiring annual progress by each individual subgroup, measured either by a minimum percentage of each group that had to prove proficient in a given year, or by a minimum percentage point increase in the number proving proficient (such that all became proficient within ten years). But states were worried that too many schools would be identified as failing -- an expensive, and perhaps more importantly, politically embarrassing label. Jeffords opposed the AYP language on policy grounds, and staff director Mark Powden helped the cause with a series of analyses arguing that a vast majority of schools in states from Texas to Connecticut would in fact be labeled as failures under the bill.

In part, this was because a numerically small subgroup might appear to lapse into failure, statistically, due simply to one or two students' performances. In part, the "continuous" progress required by the bill for each subgroup is difficult to achieve. There was a good deal of dispute over how accurate the analyses were; "they were not really reflective of what would happen in the real world," one staffer argued. Whatever their policy validity,

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[54] Siobhan Gorman, "The Making of a Bush Loyalist," *National Journal* (April 28, 2001).

[55] David Nather, "Freed of Election-Year Pressures, Education Debate Begins in Earnest," CQ Weekly (April 21, 2001): 871.

though, their political utility was clear: "it was too much bad news for too many people."[56] The governors (and some committee members) leaped at this chance to gut the disaggregation and testing requirements of the bill, and the Bush negotiators seemed surprisingly sympathetic. After cutting out Jeffords for months, "suddenly Kress was backing up Jeffords' staff," an aide recalled. "One Saturday afternoon," Nicholas Lemann would later report in a widely-read *New Yorker* article, "word spread instantaneously within this [policy] group (while the world slumbered on): Sandy Kress had just rewritten the AYP formula."[57]

The new language, as worked and then reworked around the clock for a week by Kress and (mainly Democratic) Senate staff, required at least a 1% improvement in test scores each year for disaggregated groups, but progress would be judged over a three year period and the scores of the lowest achieving students would be weighted more heavily, giving states and schools credit for closing the achievement gap. The new formula and "grading system" was attacked by educators as unworkable, and by civil rights advocates as backing away from the titular commitment of the act itself. "This policy will leave one-third of the poor kids behind," charged Amy Wilkins of the Education Trust. Senate staff admitted the new wording was "convoluted" but argued it at least left room for rescue in conference. Indeed, some argued it was in fact tougher than the corresponding House language. Kress didn't try very hard to defend the compromise -- he called it "Rube Goldbergesque," annoying his Democratic allies.[58] Clearly the AYP question was far from settled.

During this time, the schedule for the bill's floor consideration was pushed back twice. Finally, on May 3, S. 1 reached the full Senate. It would be debated there for a nearly-unprecedented seven weeks. In the meantime the House would take the lead in moving the legislation forward; it is to that body we turn next.

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[56] John F. Jennings of the Center for Education Policy, quoted in Siobhan Gorman, "When the Fine Print Changes," *National Journal* (May 12, 2001).

[57] Nicholas Lemann, "Testing Limits," *The New Yorker* (July 2, 2001), p. 32. See also Gail Russell Chaddock, "Bush Education Plan Meets New Foe: GOP Governors," *Christian Science Monitor* (May 10, 2001): 2.

[58] Wilkins quoted in Gorman, "When the Fine Print Changes"; Kress quoted in Lemann, "Testing Limits." Other information from interviews; David Nather, "Despite Senate's Plans to Cut a Deal, ESEA Bill Bogs Down in Details," *CQ Weekly* (April 28, 2001); Nather, "Compromises on ESEA Bills May Imperil Republican Strategy," *CQ Weekly* (May 5, 2001): 1009; Lynn Olson and Erik W. Robelen, "Defining 'Failure' Critical to Bush Testing Plan," *Education Week* 21 (May 16, 2001): 27; Valerie Strauss, "Lawmakers Struggle to Define Failing Schools," *Washington Post* (August 28, 2001): A8.

The House

Meanwhile, the House formulation process was also operating outside its normal channels. The chairman of the Education and the Workforce Committee, John Boehner, was an unlikely convert to an increased federal role in education, and to collaborative policymaking – in 1995 he had served in the firebrand GOP leadership under Newt Gingrich and fought for the abolition of the Department of Education. But he was extremely loyal to the new president; he was dedicated to cementing Bush's narrow, disputed electoral victory with a legislative success; and he knew how to count. That is, he knew there were thirty to forty House Republicans who would never support the sort of testing regime Bush had promised, especially without vouchers. Since the working Republican majority in the House as a whole was barely ten votes, the simple fact was that Democratic votes were needed. The outline of the basic deal was clear quite early: for Democrats to support annual testing, the Republicans would need to give on vouchers and block grants.

Filling in the details nonetheless took a lot of time and effort. While Boehner had announced in February the creation of a new subcommittee on education reform, this was not where the bill was developed. Instead, Boehner convened a separate working group made up, most often, of himself, Michael Castle (R-DE), Peter Hoekstra (R-MI), Johnny Isakson (R-GA), Howard "Buck" McKeon (R-CA), and Robert Schaffer (R-CO) for the Republicans and Miller, Dale Kildee (D-MI), Patsy Mink (D-HI), and Roemer. As the two most conservative members, Hoekstra and Schaffer, became disenchanted with the direction of the bill, they were less active, leaving a core group of about eight. But this was not an impermeable group; others from the committee were also active, especially on matters of particular interest. Kress and Youssef were normally present as well; so were drafters from the counsel's office at the Education Department charged with answering the working group's frequent "what if?" scenarios and turning the discussions quickly into polished statutory language. The majority staff of the committee did much of the first draft, with input from the working group and Kress. Indeed, Kress attended meetings even at the staff level; his role as special envoy from the president – and the clear sense that he, not the Department, was in charge of the administration's position – gave the working groups an "atypical dynamic," according to one member.

While a detour from the normal committee process, the NCLB formulation process was formal, in that it was run by the committee chairman and the ranking member. The group met

frequently – two or three times a week for the principals, every day (except for days with hearings or other markups) for staff. This meant the members were invested in the bill early on; having spent so much of their limited time working on it, the core group became not just a drafting group but a whip group, rounding up support and defusing dissent. The process also allowed the entire leadership of the committee to have full access from the outset. After all, as one GOP staffer put it, "We didn't want to renegotiate the bill as it went back to the full committee."

The substantive starting point was the set of bills proposed in 1999-2000, with HR 2 (the Title I bill that had passed the House) and HR 1995 (the teacher quality bill that had done likewise) serving to provide some basic language. On March 22, Boehner introduced his draft of H.R. 1, a close reading of the Bush blueprint: it included annual testing, Straight A's block grants, vouchers, and aid to faith-based organizations. It did *not* require states to use NAEP tests as a benchmark against their own assessments, though it allowed them to do so; "another assessment selected by the state" was also permitted.

The idea here was to undercut the conservative outcry against "national testing." Many in the education community accepted the notion that, as Arizona Superintendent of Education Lisa Graham Keegan put it, assessments "should let us know how we're doing as states in relation to one another, and how we as a nation stack up against other countries....We would recommend using [NAEP] as a sort of sunshine instrument." Miller noted that state scores frequently overestimated their students' proficiency, at least as compared to the same state's NAEP scores and argued that Boehner's NAEP opt-out provision would give states an easy exit from accountability.[59] But many Congressional Republicans feared, almost viscerally, the specter of national government invading local curricula. Family Research Council president Kenneth Connor argued that requiring NAEP participation "may lead to a national curriculum and de facto national test." Schaffer demanded, and received, language making clear that states would have complete control over student testing, curricula, and any mandatory teacher testing or certification; another section made clear that "no funds provided under this Act to the Secretary...may be used to develop, pilot test, field test, implement, administer, or distribute

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[59] Testimony before the Education Reform Subcommittee, March 14, 2001, quoted in House Report 107-63, Part I (May 14, 2001), pp. 271, 360. For Miller, and generally, see CITE

any federally-sponsored national test..."[60] The Bush campaign, though stressing local control, had argued specifically for NAEP as a benchmark; the administration urged, with Miller and other Democratic staff, that a number of strict conditions be added to the alternate assessment language as a way of making it more difficult for states not to use NAEP (indeed, some of them described NAEP).

When asked if any of his language was non-negotiable, Boehner replied "This is the Congress."[61] Funding was increased about $4.2 billion from the president's plan, with Title I spending to rise from $9 billion in fiscal 2001 to more than $17 billion five years out. With the Senate's "hell week" in full view, House drafters were able to adapt somewhat, for example changing the timeline for states to achieve proficiency from ten years in the original H.R. 1 to twelve in the new draft.[62] Another option was crafted allowing for different rates of improvement across subgroups, so long as all reached proficiency within those twelve years. In general, though, Miller pushed hard to keep tough AYP language in the House draft, since he was concerned about both the Senate and the administration: he feared the ultimate Senate language would be weaker than he preferred, and had doubts about the administration's willingness to take a tough stand on implementation if the statute allowed much wiggle room.

More broadly, in the chairman's mark elements were distilled from H.R. 1, Miller's draft (H.R. 340), and the New Democrats' plan (H.R. 345). The last of these would eventually supply a compromise on Straight A's with a plan called "transferability," the kind of deal that no one (outside the New Democrats) truly liked. Transferability had two main features: it shifted the discretion to school districts, as opposed to states, and allowed those districts to shift up to fifty percent of their ESEA money from one title to another (e.g., from teacher quality to technology enhancement) so long as they met all the requirements of the law. Conservative Republicans were beginning to get antsy, complaining that Kress was not pushing the original blueprint

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[60] Connor quoted in David Nather, "Freed of Election-Year Pressures, Education Debate Begins in Earnest," CQ Weekly (April 21, 2001): 871. The quoted portion of H.R. 1 (as reported) is Section 8603.

[61] Boehner quoted in "Dems Raise Concerns as Education Panel Unveils Bush's Plan," *National Journal's Congress Daily* (March 23, 2001); Castle likewise noted that the bill was a moving target until the end of the mark-up process. See David Nather, "Bush's Education Plan Unveiled in House Amid Muted Dissent," *CQ Weekly* (March 24, 2001): 659.

[62] Scenarios analyzed by Education Trust staff for Senate Democrats had indicated that the reaching proficiency for all students was more plausible across twelve years than ten. See House Report 107-63, Part I, pp. 8-9 [Section 1111(b)(2)(C)(vi)].

language on these issues. "On those issues [important to Congress], Sandy's OK, but he doesn't push those as hard as the testing stuff," said one committee member. Dissenting from the bill's passage from committee, Hoekstra, Schaffer, and Tom Tancredo (R-CO) argued that as reported, "the bill...contains very few provisions of the president's original proposals."[63]

In all, Republicans gave Kress lower marks than did Democrats. Kress, though, was faithfully pushing for both a win for the president and for the president's priorities. And Kress, like Boehner, could count. The first roll call in the three-day mark-up beginning May 2 was on a Miller amendment to strip the voucher provisions from the bill (though the public school choice and supplemental services provisions were left intact). It passed 27-20, with five Republicans voting "aye" and one (Castle) voting "present." Other amendments (there were forty-six in all, with eight roll calls) followed largely party-line votes, with Democratic amendments providing for $21 billion in school construction funding and retention of a separate class size reduction program defeated by identical three vote margins.

Kress and the president had no desire, as Undersecretary of Education Eugene Hickok later put it, "to sacrifice accountability on the altar of [private] school choice." Conservatives who felt that accountability required choice, though, were unhappy. Rep. Schaffer griped, "They ripped the heart of the president's plan out of the bill... Those provisions are crucial to children trapped in failing schools. It's a sad day when Republicans pass a bill that's to the left of Ted Kennedy."[64] The markup had to be suspended so Boehner, with Kress, could hold a closed-door meeting with committee conservatives, in order to dissuade them from trying to replace the transferability provisions with the original Straight A's language.[65]

Annual testing -- in opposition to which conservatives and some liberals had common cause -- also faced a fight. Here the panel leadership, fearing that an amendment to strip the bill's testing provisions might succeed, managed to get its sponsor, Betty McCollum (DFL-MN), to accept a voice vote -- but only by acceding to a roll call on the floor.

On May 9, the bill was sent to the floor by a 41-7 committee vote. Six Republicans and

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[63] Gorman, "Making of a Bush Loyalist," p.5; Dissenting Views to House Report 107-63, Part I, p. 1246.

[64] David Hess, "Bush School Bill Moves to House Floor Despite Conservatives' Ire," *nationaljournal.com* (May 9, 2001).

[65] Interviews; David Nather, "Compromises on ESEA Bills May Imperil Republican Strategy," *CQ Weekly* (May 5, 2001): 1009.

just one Democrat voted 'no.' John Boehner had achieved bipartisanship, as promised - but it had a rather Democratic flavor to it. While Boehner argued that the bill remained Republican reform (going so far as to distribute a fact sheet entitled "H.R. 1 -- What's In It for Conservatives?", focusing on the protection of homeschools and the prevention of a single national test) Kress effectively undercut the conservatives' main argument. "This bill is a manifestation of [Bush's] proposal," he said. "I believe 90 to 95 percent of his proposal is in this bill."[66]

As the bill moved to the floor on May 14, the Rules Committee kept a tight rein on the process, approving twenty-eight amendments (there would be ten times that many filed in the Senate) to be handled with less than seven hours of floor debate. The rule passed narrowly, opposed by Democrats because construction and class size reduction funding were not among them and by conservative Republicans who felt their key amendments -- private school choice and Straight A's -- should get priority in debate. Two voucher amendments were fifteenth and sixteenth on the docket, with just an hour of floor time allowed between them. The Senate version of Straight A's was the only one approved for consideration, and put close to last.[67]

Thus, while the ultimate vote on approval was lopsided -- 384-45, with Republicans making up three-quarters of the "no" votes -- "there was nothing easy about steering [H.R. 1] through a House full of unhappy conservative Republicans and skeptical liberal Democrats looking for a good reason to bolt."[68] The key was defeating changes to the committee-approved bill and indeed, the chairman's mark, minus vouchers, was essentially the bill passed by the full House on May 23. Boehner, worried that even the Senate version of Straight A's would scuttle the bill in the House, brought the GOP leadership to meet with the president, who told them "I'm with Boehner." Sponsor Jim DeMint (R-SC), under White House pressure (and with some compensation for his district), agreed to drop his amendment. But by then, as one GOP aide noted, the Senate language -- "Ted Kennedy's Straight A's" -- was not worth

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[66] David Nather, "Democrats Leaving Their Stamp on Bush's Education Bill," *CQ Weekly* (May 12, 2001): 1079.

[67] Nather, "Democrats Leaving Their Stamp"; Nather, "As Education Bills Head for Floor Votes, Big Ideological Tests," *CQ Weekly* (May 19, 2001): 1157. The House Rule was in House Resolution 143, with amendment texts printed in report 107-69, dated May 16, 2001.

[68] David Nather, "Education Bill Passes in House with Strong Bipartisan Support," *CQ Weekly* (May 26, 2001): 1256.

conservatives' loyalty anyway. In its place a small-bore block grant program dubbed "Super Local Flex," aimed at one hundred districts nationwide, was added to the bill, though barely.[69]

Majority Leader Dick Armey (R-TX), Majority Whip Tom DeLay (R-TX), and Boehner sponsored the amendment to restore private school choice to the list of corrective actions required of failing schools. With Boehner, as even one GOP staffer conceded, this was with "a nod and a wink." But Schaffer once more implored members "to restore what really is the heart and core of the President's...proposal." Democrats, for their part, warned the amendment was "a partisan ambush" that would end their support for the bill. Both sides argued that their position would do more to serve low-income children, and that it represented the view of most Americans.[70]

The dueling meanings of "accountability" were on clear display during the debate. Roemer, citing the bill's testing and corrective action requirements, noted that private schools were not covered by those mandates. "This amendment has no accountability in it," he argued. "We take the money with the voucher from the public school to a private school, and then there is no accountability there. No test, no trail, no nothing." Armey retorted: "We do not ask the Catholic schools to be accountable to the government, we ask them to be accountable to the parents, the parents that love their child enough to find out how the school is doing by my child, care enough about the child to move the child..." Hoekstra added a mild shot at the Bush blueprint: "The president's plan...talked about accountability, and the accountability was to the federal government. What this amendment says is that there is another accountability. It is the accountability of schools, teachers, to parents."[71]

Ultimately both the wider private school choice provisions and a small pilot version providing five demonstration projects were defeated; as before, the vote was not close.

The largest remaining threat to the bill truly did go to the heart of the Bush proposal: an amendment striking the annual testing provision. This was sponsored by the odd couple of

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[69] Broder, "Long Road to Reform"; interviews. Super Local Flex let two districts in each state combine funds from four ESEA programs however they chose; they could move money into Title I but not out of it. The vote was 217-209.

[70] The quoted phrase is from Major Owens (D-NY). C.L. Otter (R-ID) claimed that the "vast majority" of the public supported support private school choice; Kildee pointed out that voucher referenda had failed in November 2000 both in Michigan and California.

[71] The debate on this amendment may be found in the *Congressional Record* (May 23, 2001), pp. H2589-96.

Hoekstra and liberal Barney Frank (D-MA), reminiscent of the "Baptist-bootlegger" coalitions of Prohibition days. However, the debate ran to sows instead of sourmash. Bobby Scott (R-VA) argued, "When we discuss the issue of testing, we have to remember the farmer's adage: 'you do not fatten the pig by weighing the pig,' meaning you do not improve education merely by giving tests." Howard 'Buck' McKeon (R-CA) one-upped him: "I was an animal husbandry student in college, and I learned that they did weigh hogs before they took them to market. You have to test to find out how things are doing, and you had to weigh the hogs to find out if what you were feeding them was appropriate." Miller concurred: "Pigs are sold by the pound. If the pig is sick, one wants to know that. That is why that assessment is made."[72]

Many close observers thought the amendment might pass, and so the White House took no chances. Bush chief of staff Andrew Card and political guru Karl Rove made the rounds of recalcitrant Republicans. The Business Roundtable put out an email alert asking its members to lobby against the amendment. While a number of Democrats (including the minority leader, minority whip, and ranking member of Appropriations) voted for the amendment, in the end the White House position prevailed by a comfortable eighty-two votes.

As the scene shifted back to the Senate, then, the bulk of the committee bill was intact. The standards, testing, and consequence provisions were basically what the full committee had approved. They are summarized in Table 2, along with the provisions of the Senate version.

[TABLE 2 ABOUT HERE]

And Back to the Senate

In the Senate Jim Jeffords's decision to quit the Republican caucus, announced formally the day after the House engrossed H.R. 1, had an electrifying impact on the balance of power on Capitol Hill. Yet it had little impact on the education bill. After all, Senator Kennedy's agreement to deal with the White House on supplemental services and spending flexibility had made him the major player in the Senate formulation process even before he formally assumed the HELP chair.

Something of a "liberal rebellion" against the Kennedy deal ensued, the mirror image of

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[72] Debate on this amendment may be found in the *Congressional Record* (May 22, 2001), H2526-2531.

the conservative hesitation with the bill in the House; here the complaint was largely about money.[73] Some Democrats thought new Majority Leader Tom Daschle (D-SD) should have prevented the bill from reaching the floor until the president promised to support substantial spending increases in this area. Dodd and others were especially upset by the president's refusal to endorse a sufficient increase in Title I funding to ensure it was able to reach all poor children within ten years. Early Senate floor votes had already added huge funding commitments in this area, and in special education.[74] Senators agreed by voice vote to directly fund (not just authorize funding for) IDEA to the tune of $181 billion over ten years, and -- by 79-21 vote -- to boost authorized spending on Title I by $132 billion over the same time frame. It was evident, given that the budget resolution capped increases in domestic spending to some four percent that these were not realistic votes. This may account for their success.

The Senate rules are notable for their deference to individual members, and unlike the House, amendments to a measure need not be germane.[75] Thus nearly three hundred amendments were filed, and more than one hundred fifty were ultimately offered. They ranged from small programs encouraging men to become elementary school teachers and to aid Alaska natives, to curricular micromanagement stressing music, "financial literacy", and the Federalist Papers, to resolutions expressing the sense of the Senate that energy prices should be investigated and campaign finance reform passed. Ultimately eighty-nine programs were included in the Senate version of ESEA, up from fifty-five in the existing law (the House had cut that number slightly, to forty-seven). Total authorized spending for fiscal 2002 reached $33 billion: ten billion dollars more than the House total, and fourteen billion over the president's preference. "A function of being on the floor too long," bemoaned a GOP staffer; even the Education Trust's Wilkins commented that "The Senate bill has gotten bloated and lumpy."[76]

The core group, however, had pledged to suppress amendments that went to the heart

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[73] David Nather, "Education Compromise Beset by Democratic Riders in the Senate," *CQ Weekly* (June 9, 2001): 1371.

[74] The special education law is entitled the Individuals with Disabilities Education Act (thus, IDEA).

[75] For a nice explication of legislative procedure, see Barbara Sinclair, *Unorthodox Legislating*, 2nd ed. (Washington, DC: CQ Press, 2000).

[76] Quoted in Lizette Alvarez, "Senate Approves Legislation to Penalize Failing Schools," *New York Times* (June 15, 2001).

of the basic deal. The accountability provisions changed very little. A Dodd amendment narrowing the Straight A's program by removing the "21st century schools" program, for example, was defeated 47-51 with three New Democrats voting no. A very small voucher pilot program, covering just ten districts, was defeated 41-58 with eleven Republicans in the negative. A proposal by Paul Wellstone (D-MN) to allow states to defer the new annual testing requirements unless Title I funding was tripled also failed; here Kennedy, Lieberman, and Bayh all voted 'no.' Amendments on class size and school construction were defeated on near-party-line votes; another Dodd amendment aimed at evening out financing disparities between districts lost 42-58. While an effort to cancel testing unless Congress picked up all its costs was defeated (Kennedy and Lieberman again voting against), the Senate did approve an amendment to allow states to skip testing in years when Congress failed to appropriate a set minimum ($370 million in fiscal 2002, rising over time).

On June 14, the amended text of S. 1 was adopted by a 91 to 8 vote, with six Republicans and two Democrats opposed.[77] Many of the provisions regarding accountability were similar to those in the House, though along a slightly different timeline (see Table 2). Major differences lurked for conference, though: in AYP, in the flexibility language, and in the host of seemingly-extraneous but tenacious "social issues" that had haunted the bill before.

The Conference Limbo

It took more than a month after the Senate finally passed H.R. 1 for the two chambers to name conferees. During this period there were chinks in the bipartisan armor that had protected the bill so far and prospects of agreement seemed less rosy; David Broder warned in his syndicated column that "President Bush's cherished education reform plan is in trouble," under fire from local officials who didn't want national norms, teachers' unions that thought all testing should be voluntary, and conservatives who thought that with vouchers dead the rest of the bill might as well be too.[78] Secretary Paige was accused by the press of being disengaged

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[77] That text was ultimately adopted as a substitute amendment to H.R. 1, so the final measure passed by the Senate was numbered H.R. 1 (though entitled the BEST Act rather than NCLB).

[78] David Broder, "Education Reform is Running on Empty," *Boston Sunday Globe* (July 15, 2001): D7; see also Jodi Wilgoren, "State School Chiefs Fret Over U.S. Plan to Require Testing," *New York Times* (July 17, 2001). The National Education Association adopted a resolution at its annual convention in June, 2001, urging that parents be allowed to "opt their children out of all mandated standardized tests."

from the policy process, shouldered aside by the White House.[79] Further, complaints that the bipartisanship that had passed the bill had also watered it down began to gain ground. House Republicans had thought that with a Republican Senate they could gain back any concessions in conference; but the Senate had switched hands. Democrats began to wonder too: after all, some calculated, didn't the president need this bill more than they did?[80] To add insult to injury, yet another series of reports argued that both the House and Senate AYP provisions would result in a large number of schools identified as failing, since both required annual improvement by each subgroup of students.[81]

The conference then, would not merely revise language but rewrite it, debating all the big issues yet again. The president used his weekly radio address on July 7, and Rose Garden remarks on July 9, to push the process along; finally, on July 10, the Senate named its conferees. There were an astounding twenty-five of them, a full quarter of the chamber. The Democratic side included all the majority members of the HELP committee, including Jeffords, plus -- in a rare event -- non-committee members Lieberman and Bayh; the Republicans countered with their HELP membership and Wayne Allard (R-CO), DeWine, and John Ensign (R-NV). A week later the House followed suit with a more limited delegation of fourteen (eight Republicans and six Democrats).

One key issue was funding and, especially for Senate Democrats, funding of special education. This was seen as important in its own right, but it would also allow local districts to free up money currently going towards disabled children. Another, of course, was AYP. President Bush used an August 1st speech to the Urban League to urge a "rigorous" but realistic formula for determining failure: "I appreciate aiming high, but setting impossible expectations means setting no expectations....If we identify all schools as failures, we won't be able to focus

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[79] Noam Scheiber, "Rod Paige Learns the Hard Way," *New Republic* (July 2, 2001); Diana Jean Schemo, "Education Chief Seeks More Visible Role: Secretary Has Been Forced to Take Back Seat to White House Staff," *New York Times* (August 5, 2001): 17. The substance of these articles was, and is, fiercely disputed by White House and departmental officials with whom I spoke.

[80] Interviews; Gorman, "Behind Bipartisanship."

[81] Strauss, "Lawmakers Struggle to Define Failing Schools," notes three such reports: one by Thomas Kane of UCLA and Douglas Staiger of Dartmouth, one by Kane, Steiger, and Jeffrey Geppert of the National Bureau of Economic Research, and a third by the Congressional Research Service. The Senate required "continuous and substantial" improvement for the overall student body and each subgroup of students, the House "continuing and significant" improvement (see Table 2).

on the greatest needs." He noted that while states should choose their own tests, "within a state, those tests must be comparable from place to place and year to year. Unless there's a fair and consistent measurement among schools, there can be no accountability." This held nationally too: "we must have independent evidence that state tests are rigorous and state tests are real." The NAEP, he argued, would serve that purpose: "It's not a national test, and we certainly don't need one. But we do need a national report card, and NAEP serves that purpose. We need an objective check on state accountability systems, so we need the NAEP for every state."[82]

But these would ultimately be some of the last issues settled. Indeed, conferees faced some 2,750 divergences between the bills that needed to be bridged. Staff members representing all thirty-nine members of the conference met daily throughout the summer recess to hammer out more than two thousand agreements on language. In theory, the most contentious issues (such as vouchers) had already been stripped from the bill; in practice, this made the discussion little less time consuming. For example, one change made to the assessment section by the House -- requiring that tests "not assess the personal opinions, attitudes, or beliefs of the student" – led to a day of discussion by the assembled staff as to whether one's interpretation of an essay on a reading comprehension exam might constitute a personal opinion.[83]

There were literally hundreds of such discussions. A wide array of possible deal-breakers (funding, flexibility, and AYP -- plus issues like the teaching of hate crime prevention, voluntary school prayer, civil rights practices by after-school programs, marketing in schools, and the use of school property by Boy Scouts and other groups) had to wait for the fall.[84] And with the fall, came September 11. That morning, President Bush was in a Florida school, aiming to pressure the conference to move forward. By that evening, the mass murders in New York and Washington had pushed all other issues from the public consciousness. The Capitol

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[82] President George W. Bush, "Remarks to 2001 National Urban League Conference," Office of the Press Secretary, White House, August 1, 2001.

[83] The final language read that tests may not "evaluate or assess personal or family beliefs and attitudes."

[84] Interviews; David Nather, "Conferees Make Little Headway on Biggest Issues in Education Bill; Recess Talks Planned on Accountability," *CQ Weekly* (August 4, 2001): 1926; Nather, "Education Bill May Create Senate Logjam," *CQ Weekly* (September 8, 2001): 2072.

Hill anthrax scare followed closely behind.

By the end of October, Republican leaders such as Trent Lott and Dick Armey were suggesting publicly that finishing the bill in 2001 was not a priority. In part this reflected the continuing, even growing, concern by states that the bill's testing provisions were – in the words of a heated letter from the National Conference of State Legislatures to the conferees – "seriously and perhaps irreparably flawed."[85]

Still, NCLB returned to the congressional agenda with surprising rapidity, pitched as a blow for normalcy. "Terrorism will not derail America's domestic policy agenda," said Boehner, as the full conference met on September 25. When anthrax closed some legislative offices, some staff moved briefly to offices at the Department of Education, but for the most part progress continued. Subgroups of conferees met consistently, hashing out the "social issues" in October, a revamping of bilingual (LEP) education in November. By now the remaining issues were in the hands of the "Big Four," the chairmen and ranking members: Boehner, Miller, Kennedy, and Gregg. Given the size of the conference, one Senate aide pointed out, there was "not much choice but to have the Big Four sit down" and noted that "in the 106th Congress, those four people wouldn't even have sat down together." In the event, another staffer added, "It was a good 'big four' to have. Gregg and Miller held up the ideological ends and the legislators [Kennedy and Boehner] made sure it happened."

As November drew to a close, the four reached informal agreement in most areas, with periodic meetings at the White House for presidential exhortation. A pilot "Straight A's" program was worked out along with supplemental services language. Language providing additional targeting of Title I funds was approved.[86] Extra money for charter schools was found; full IDEA funding was not. That last decision would prompt three Senators (Jeffords, Jack Reed (D-RI), and Wellstone) to withhold their signature from the conference report.

Last, or nearly so, was AYP. "We changed [it] a dozen times," Kress commented later; this issue was left largely in the hands of Boehner, Miller, and Bingaman. In the end, strict

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[85] Boehner quoted in Siobhan Gorman, "Schooled in Survival," *National Journal* (December 15, 2001); NCSL quoted in David Nather, "Conferees on Education Overhaul Dismiss Whispers of 'Next Year,'" *CQ Weekly* (October 27, 2001): 2544.

[86] The new formula will lead to significant new dollars for states with large concentrations of poverty such as New York and California.

disaggregation and a twelve year time frame to proficiency were included. Thus, all students, in all groups, must reach the same level of proficiency within the same twelve year period. However, to overcome the volatility of single-class statistics, schools can average data over a three year period. Further, schools can utilize a "safe harbor" provision that allows subgroups not meeting the targeted increase in proficiency to qualify as meeting AYP if the number of non-proficient students in that subgroup dropped by ten percent or more. While the main thrust of the AYP provisions trace back to 1999, these were important changes that made the final version more workable, and more detailed, than either the House or Senate versions (see Table 3.)

[TABLE 3 ABOUT HERE]

However, although states had faced penalties and bonuses for their overall performance in both the House and Senate plans, this language was dropped in conference. No punishment would be imposed on states for low test scores, though they could be punished for failing to participate. Likewise, the national testing issue was settled by requiring states to participate in the 4th and 8th grade NAEP tests at least every other year; but no penalty could be assessed based on a state's performance on NAEP.[87]

There is an apt postscript: While the conference voted for its report on December 11, five months after the Senate passed H.R. 1, the report was not printed for two more days. The reason was simple: members and key staff were engaged in a marathon conference call to work out the final language on AYP, supplemental services, and other fine print, a "surreal" task that went through the wee hours of the morning and through the next day until the report was officially filed at 7:01 a.m. on December 13. While the conference call was going on in one room, participants would meet with their own caucus (sometimes, via a second conference call) in the next. This allowed for quicker approval of detailed language; but perhaps the key reason it was a call and not a meeting was simpler still. "By that time," recalled a Senate staffer, "no one could stand to see each other."

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[87] See House of Representatives, "Conference Report to Accompany H.R. 1," Report 107-334, December 13, 2001, pp. 24ff.

IV. Final Passage and Assessment

On December 13, the House adopted the conference report by a 381-41 margin; the Senate followed suit on December 18 with an 87-10 tally. Those voting against were an odd amalgam of the far left and far right, an echo (albeit a weak one) of the Frank-Hoekstra coalition during House debate. As Tim Roemer put it, the process "brought the middle together, and held it."[88] This cohesion had positive results, but also some that may undercut the bill's effectiveness in the long run.

Why Did NCLB Pass?

The most obvious positive is that NCLB passed. It should not be forgotten that ESEA's authorization had expired in 2000, so Congress would have been under pressure in any case to pass *something*. Still, that pressure had led to little in the 106th Congress; and the 107th Congress was even more closely divided. Though the policy ingredients were already on the table, something new was needed -- if not substantively then politically. At least four factors are worth mentioning here.[89]

First is the alliance, foreshadowed in the 106th Congress, between moderate "New" Democrats and the bulk of the Republican caucus. This partnership was underwritten by a common belief that federal education policy had failed to demand any real results in return for the billions of dollars poured into local schools since the original passage of ESEA.

Of course, that common ground had been insufficient in 2000. In 2001, however, the same ground began to look better to both sides, especially to Republicans, as GOP leaders like John Boehner and especially Judd Gregg supported a wide array of proposals they had previously opposed. For by then, the second factor was on the scene: new President George W. Bush. Suddenly Republicans had a real incentive to find a solution; many wanted the president to succeed (especially on an item he had so stressed in his campaign) more than they needed to be faithful to their past positions on the role of the federal government in education. Bush himself made this easier by embracing Democratic positions and leaders. Republican observers are unanimous that the president's role was determinative, that, as one put it, "he added

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[88] Roemer interview.

[89] A conversation with Cong. Tim Roemer was particularly helpful in thinking through this section.

tremendous value." Certainly the president's intense interest in the issue and personal engagement in the process was crucial to pushing the bill through times of stasis and stalemate. Even in the weeks after September 11, he continued to make NCLB a priority and thus empowered lawmakers to do the same. Further, Bush - as a Republican president leading on a traditionally Democratic issue - gave the narrative a "man bites dog" quality. This made for exhaustive press coverage of the process and guaranteed the issue (and potential failure to reach agreement) high salience.

The third factor is the unorthodox organizational structure utilized for the bill's formulation. In both House and Senate, formal committee structures were evaded to create what one participant called a "Congressional compact." The bipartisan working groups that were created worked incessantly, and were able to build the internal rapport necessary to support the bills through the legislative process. Crucial to this was a willingness to jettison things only one party liked, whether it be spending provisions on class size or private school choice.

This was possible because, fourth, a new vocabulary had been developed: the conversation was centered on a new language of accountability. Accountability proved key in framing the issue: it was a way for Democrats to talk about education reform without simply talking about more money, but it was a way to sell additional resources as well, since Republicans could argue that the rathole had been plugged, that new money was going into a newly efficient system. As noted above and detailed below, how one defines accountability matters greatly in *practice*, but it proved to matter far less in *politics*, to the term's utility in providing a unifying theme for the NCLB debate.

What Will NCLB Do?

Bipartisan focus on accountability gave the education bill momentum through the substantive minefields that had exploded prior attempts at reform. Yet that accountability in practice has natural limits, because different people meant different things by it and because the resultant compromises are all in the new law. Some actors in the process simply meant resources, hiring better and better-trained teachers for small classes in new buildings with new technology. Some meant more flexibility with existing resources, requiring results but not placing any conditions on how they were achieved. Some meant holding schools to a national

standard of performance. Some meant letting the market intrude on public education, forcing schools to compete or close.

All of these views implied different blends of standards, assessments, and consequences, and elements of all are in NCLB. There is additional money, much of it targeted to needy districts, and new flexibility for spending it at the local level. There is annual testing, and the requirement for *all* students to reach proficiency against challenging standards within twelve years, and the requirement that states participate in NAEP every other year (up from an option to do so every four years). There is public school choice and charter school creation and school restructuring and the ability to take Title I money to buy supplemental services from a private sector vendor.

This is farther than federal law has ever gone in this area, and it is far as it could have gone, given the political alignments in effect in 2001. President Bush and members of Congress achieved an impressive legislative victory by holding firm to common language, avoiding extremes from both ends of the policy spectrum and subsuming the substantive divergences lurking beneath the surface of their terminology. The conclusion may be simply be that the intersection of education policy and federalism files down the sharpest teeth of accountability. That is: common language did not necessarily mean common ground; it certainly did not extend to choosing a single approach to accountability.

Democrats, for example, fiercely resisted granting wide discretion to local districts, on the one hand, and to parents, on the other. The number of categorical programs under ESEA did not diminish significantly. Public school choice is greatly expanded, but it is not clear how much this will help students in far-flung rural districts, or in urban systems where most or all of the public schools are identified as needing improvement. And experimentation with voucher programs will have to await the baby steps of the supplemental services program and continued efforts at the local level. In February 2002, President Bush proposed a tax credit to subsidize private school tuition, prompting calls that he was reneging on the NCLB agreement.[90]

For their part Republicans resisted efforts to require strong state accountability to the national government. The very first bullet point in John Boehner's committee fact sheet on the

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[90] Anjetta McQueen, "Bush's Private School Tax Credit Reignites the Voucher Debate," *CQ Weekly* (February 16, 2002): 482.

H.R. 1 Conference Report trumpets "No National Tests."[91] As noted, there is no consequence to the NAEP requirement, nor for states that fail to attain AYP. States will be able to set their own definition of proficiency, and use their own assessments to measure it. Will states pick a definition of acceptable achievement that is simply too low? Should the states decide whether state tests are good enough? Will there be "a race to the bottom to find the easiest state test," as Diane Ravitch worried? Indeed, will states be allowed to use a mixture of state and local assessments?[92] One concern is that the toughest specific requirement -- that all subgroups of students make measurable progress each year, and achieve full proficiency within twelve years -- may be the least realistic. The very name of the act made it hard to compromise on this point. But a catchy name does not always equal feasible policy; to prevent states from defining proficiency down, a lower figure (90% proficiency?) may be substituted at the halfway point of the twelve-year countdown during the *next* ESEA reauthorization cycle in 2007.[93]

Both sides ducked the fact that only 7% of education funding is federal. This simple fact, despite the rhetoric, necessarily limits the amount of change the federal government can leverage. Even if willing to use its sticks, the Department of Education has small sticks to brandish. Yet Congress has little incentive to limit its legislative reach, given its potential to reap credit from successful change and ability to blame poor results on the states. The requirements are largely top-down, but successful change is likely to be largely bottom-up.[94]

Still, NCLB represents a major expansion of the federal role in education. If the sticks are mainly moral, the requirements are clear and very salient. State flexibility in itself is not a

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[91] John Boehner, "H.R. 1 Conference Report Highlights," House Education and the Workforce Committee Fact Sheet, December 10, 2001.

[92] Lynn Olson, "Testing Systems in Most States Not ESEA-Ready," *Education Week* 21 (January 9, 2002): 1; Ravitch quoted in Nather, "Freed of Election-Year Pressures, Education Debate Begins in Earnest." Beyond the "national test" worries, Nicholas Lemann suggests that the publishers of existing tests lobbied hard against NAEP comparability, since that would serve as a check against the quality of their own assessments. See Lemann, "The President's Big Test," transcript of PBS *Frontline* interview, March 28, 2002, at http://www.pbs.org/wgbh/pages/frontline/shows/schools/nochild/lemann.html/.

[93] The original New Democratic proposal was for 90% of students at proficiency. An *Education Week* survey of states in the spring of 2002 found widespread nervousness about the act's AYP provisions in general; see Lynn Olson, "'Inadequate' Yearly Gains are Predicted," *Education Week* 21 (April 3, 2002): 1, and more broadly Wilgoren, "State School Chiefs Fret."

[94] See Terry Moe, "Politics, Control, and the Future of School Accountability," paper prepared for the Conference on Taking Account of Accountability, Kennedy School of Government, Harvard University, June 2002.

bad thing, especially given the diverse approaches states have already taken to implement the 1994 requirements. The law does provide a good deal of information to parents, administrators, elected officials, and interest groups, making it harder for states to "dumb down" and politically difficult to retreat from a standards and testing regime. In the right circumstances the various approaches may prove to be congruent and even additive; two (or more) great things may, indeed, go great together.

The "right" circumstances are hard to predict. Still, even if "you don't blame the institution of marriage when someone cheats," as one Senate staffer commented, one might nonetheless think counseling is a good idea. The therapist role here falls to the Department of Education. In the end, whether accountability outweighs avoidance or the reverse depends not just, or even mainly, on the text of the statute. That text must be interpreted in regulation by the Department and in practice by the definition of progress and proficiency in the states.

The Department has promised to hold firm on enforcement, and Senate HELP chair Kennedy promised in April 2002 to hold hearings every six weeks on the progress of implementation. Budget questions will be a highly salient part of the equation: while Democrats were satisfied with the funding levels provided the law for fiscal year 2002, this was far from true for fiscal 2003 and promises to be a major issue as the act moves forward.[95]

In a sense, this is the debut for Secretary Paige and his department, given their secondary role in the bill's formulation; it has already begun. The AYP provisions are so specific in statute that regulations may be minimal. However, on other regulatory fronts the details will matter greatly. For example, draft rules on testing were released in March 2002 and a negotiated rulemaking process set in motion, bringing together twenty-one parents and educators from around the country. Already in these early steps there were complaints that groups who had criticized the new law were not included in the rulemaking, and indications that states would be allowed to use a mixture of tests, potentially undercutting their comparability.[96] Many questions remain. Will the Department grant waivers or extensions to

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[95] Hickok interview; notes by author from Senate HELP hearing on ESEA Implementation, April 23, 2002, Dirksen Senate Office Building; Erik W. Robelen, "Democratic, GOP Education Plans Differ by Billions," *Education Week* (March 27, 2002): 1.

[96] Six Senators, including Kennedy, wrote to Paige on March 20, 2002, "troubled" that some of the draft regulations "could weaken the accountability system established by the new law." David Broder, "Education Reform Controversy Lingers," Washington Post (April 7, 2002): A5. See also John F. Jennings and Diane Stark

the governors who earlier sought to undercut the law's accountability requirements? Will it pull federal funding from lagging states or schools? Will states be forced to use tests that tie in well to their standards, or will they use cheaper (but perhaps useless) "off the shelf" exams? Will the testing regime itself be maintained in the face of griping from states -- and from suburban parents? How will the Secretary balance state experimentation and national rigor? How will he interpret the "peer review" process in approving state plans that may lowball their requirements for proficiency?

It is here that interest groups -- surprisingly dormant in the narrative above -- may reassert themselves. To be sure, during the legislative debate, organized interests did play a role. Sometimes that was active: test publishers, for example, lobbied hard to keep NAEP from becoming the sole standard, and to allow multiple assessments within states. State governors and school boards, groups empowered by federalism, pushed to soften AYP and receive additional funding. Think tanks and policy groups were important in the formulation and assessment of the bill and the options to it considered throughout the process. Still, the greatest success of interest groups generally was in constraining the breadth of the political debate, pushing "their" party to reject options unacceptable to them. Democrats and Republicans both played to their constituencies; and vouchers opposed by teacher unions and national standards opposed by social conservatives were two victims. But little overt lobbying was needed to bring that about. In the world of implementation, as the scene shifts to the states and the bureaucracies at all levels of government, that may change.

And so, as John Adams put it long ago, "The laws are a dead letter until an administration begins to carry them into execution."[97] That, no less than the fanfare-filled signing ceremony, is how government works, even in the textbooks. And for the students in American public schools, that execution will determine how it works in real life.

Rentner, "Writing the Second Chapter," *Phi Delta Kappa International Washington Newsletter* 11 (Spring 2002): 1; Lynn Olson, "Testing Rules Would Grant States Leeway," *Education Week* (March 6, 2002): 1.

[97] From his 1787 *Defense of the Constitutions of Government of the United States*, quoted in David McCullough, *John Adams* (New York: Simon and Schuster, 2001), p. 378.

Table 1. Accountability in the No Child Left Behind Act of 2001 (P.L. 107-110)

I. Standards

- States must develop academic standards in reading, math, and (by 2005-06) science.

- Requires that standards be "challenging," that they "specify what children are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills."

- Requires that "achievement standards" be aligned with the state's academic content standards (that is, not comparing students to each other), and that they can describe students who have reached three levels of achievement: basic, proficient, and advanced.

- Requires that states select measures of students' adequate yearly progress (AYP), such that all students (not just those served by Title I) and many subgroups of students (the economically disadvantaged, those limited in English proficiency (LEP), members of major racial and ethnic groups, the disabled) must reach a proficient or advanced level of achievement within twelve years. [For details of AYP, see Table 3 on page __.]

II. Assessments

- By the 2005-06 school year, states must begin annual testing of each student in grades 3-8 in math and reading (the earlier requirement of one additional test in those topics in grades 10-12 remains). As above, these tests must be aligned to state academic standards and "provide coherent information about student attainment of such standards"; they must be "of adequate technical quality for each purpose required" by the law.

- By the 2007-08 school year, states must test students in science three times during their scholastic careers (once in grades 3-5, once in grades 6-9, and once in grades 10-12).

- To meet the AYP standards noted above, at least 95% of pupils must be assessed.

- Money is authorized to help states pay for this testing regime; states may delay administration, though not development, of the tests if a minimum appropriation level is not fulfilled (this level was $370 million in FY02)

- States must participate in National Assessment of Educational Progress (NAEP) tests in 4th and 8th grade reading and math every other year (costs will be covered by the federal government). This provides a benchmark for the rigor of state assessments -- but there is no tie to AYP or penalty associated with NAEP scores.

III. Consequences

- All states, districts, and schools, shall have "report cards" giving parents and the public information on assessment results, disaggregated by race, gender, disability status, migrant status, LEP status, and income.

- If a school fails to meet state AYP standards...

> *for two consecutive years:* "School Improvement." Schools must receive technical assistance (e.g., professional development, "instructional strategies," budget analysis) and create a turnaround plan; and their students must be offered the choice of another public school within the district, with transportation included, unless public school choice is prohibited by the state. If all schools in the district are identified for school improvement, districts "shall, to the extent practicable" establish agreements with other districts. Schools already identified as needing improvement under the 1994 ESEA amendments remain in that status and must offer public school choice in 2002-03.

> *for three consecutive years:* school improvement continues, with the above options; parents of low-income students must also be given the opportunity to use Title I money to receive "supplemental educational services...from a provider with a demonstrated record of effectiveness," possibly in the private sector. The cost to the district of transportation and supplemental services is capped at 20% of its Title I funds (the lowest-achieving pupils get priority).

> *for four consecutive years:* "Corrective Action." The actions above continue; while at least one of six options must be imposed: (1) replace relevant school staff; (2) implement a new curriculum; (3) "significantly decrease management authority at the school level"; (4) appoint an outside consultant to advise the school on its progress; (5) extend the school day or year; (6) restructure the school's internal organization.

> *for five consecutive years:* "Restructuring." This requires "alternative governance" of the school no later than the fall of the 6th year, either through (1) reopening as a public charter school; (2) replacing most or all of the school's staff; (3) contracting with a private management company to operate the school; (4) state takeover of the school; (5) "other major restructuring" that "makes fundamental reforms" and has "substantial promise of enabling" the school to meet AYP targets.

• If a district does not meet AYP standards, it faces analogous penalties: after four years, states may offer inter-district school choice, with transportation paid by the sending district.

• If a state does not meet AYP standards overall, it will be listed in a report to Congress; technical assistance will be provided to states who fall short of their goals

IV. Additional provisions relevant to accountability

• "Super Local Flex" provisions relaxing categorical requirements for non-Title I ESEA funds for 150 districts nationally, in return for increased student performance

• Number of titles reduced from 14 to 9, authorized programs reduced from 57 to 45

• Additional funds (authorized an additional $7.9 billion for fiscal 2002: $3.2 b was appropriated

• Additional targeting of ESEA money towards poorer districts: additional Title I funding in fiscal 2002 ($1.6 b) leads to a 30% increase in funding for most large cities

Table 2. Accountability in H.R. 1, House and Senate versions

I. Standards

- **Academic standards**

HOUSE: states must develop "challenging" academic standards in reading, math, and (by 2005-06) science
SENATE: same, but adds history by 2005-06

- **Adequate Yearly Progress (AYP)**

HOUSE: Allows states 12 years to get all students (and each subgroup) to "proficient" levels relative to the academic standards above. Formula must include drop-out rates. Requires "continuing and significant improvement" for the overall student body and each subgroup of students. States shall set annual goals for AYP, such that either all subgroups meet the same level of proficiency each year or each has a different goal, provided that the minimum yearly increase in the second case shall get all students to proficiency within the twelve year time frame.

SENATE: Allows states 10 years to get all students to "proficient" levels. Formula must include drop-out rates for secondary school students and one state-determined indicator for elementary school students. Requires "continuous and substantial improvement" for the overall student body and each subgroup of students. State formula may more heavily weight subgroups performing at "a level furthest from the proficient level" and that make the greatest improvement; the proportion of each subgroup reaching proficiency must increase by at least one percentage point annually, though data may be averaged over the current school year and the two prior.

II. Assessments

- **Testing**

HOUSE: states must test students in grades 3-8 in reading and math each year, starting in 2004-05, as well as test at least once in those subjects in grades 10-12.
States must participate in NAEP or other state-chosen test each year

SENATE: states must test students in grades 3-8 in reading and math each year, starting in 2005-06, plus once in grades 10-12. Money is authorized to help states pay for this testing regime; states could suspend testing if a minimum appropriation level is not reached.
States must participate in NAEP tests in 4^{th} and 8^{th} grade reading and math every year
By the 2007-08 school year, states must test students in science three times during their scholastic careers (once in grades 3-5, once in grades 6-9, and once in grades 10-12).
To meet the AYP standards noted above, at least 95% of pupils must be assessed.

III. Consequences

• **Report Cards for states, districts, and schools**
HOUSE and SENATE: both require this

• **If a school fails to meet state AYP standards...**

> *After one year:*
HOUSE: schools would prepare a school improvement plan and receive technical assistance; students would be offered public school choice, with transportation (costing in total up to 15% of district's Title I funds)
SENATE: schools would prepare a school improvement plan and receive technical assistance; no public school choice provision

> *After two years:*
HOUSE: require use of Title I schools for supplemental services (up to 40% of school's allotment); district must also take one corrective action such as replacing staff at the school, implementing a new curriculum, extending the school year or day, or appointing outside experts to advise the school
SENATE: require public school choice (but without transportation)

> *After three years:*
HOUSE: restructure the school: reopen the school as a charter school, contract it out to a private firm, or have the state take it over. In some cases this is triggered after four years.
SENATE: require use of Title I money for supplemental services and for transportation for public school choice; replace staff at the school, or reopen it as a charter school

> *After four years:*
HOUSE: no additional provisions
SENATE: reopen the school as a charter school, contract it out to a private firm, or have the state take it over

• **District AYP**

HOUSE: if a district failed to make AYP for two years, it would develop a plan for improvement and receive technical assistance; after four years, states would take more drastic "corrective action," including inter-district school choice
SENATE: similar, but without the school choice provision

• **State AYP**

HOUSE: after two years, state could lose 30 percent of federal administrative funds, rising to 45% after three years. Bonuses also available for good performance.
SENATE: Similar.

• **Charter schools**

HOUSE: technical changes to Charter Schools Expansion Act of 1998 (PL 105-278)
SENATE: $400 m provided to aid creation of new charter schools

IV. Additional provisions relevant to accountability

• **Consolidation/Ed-Flex**

HOUSE: 50% transferability among four ESEA programs, or into Title I, with current rules retained; 100 districts in "super local flex" consolidation of non-Title I funds

SENATE: "Straight A's" pilot program of 7 states and 25 school districts consolidating most ESEA funds into block grants

• **Number of programs authorized**

HOUSE: 47

SENATE: 89

• **Additional ESEA funds**

HOUSE: $4.6 b increase in FY2002, with Title I funding doubling to $17.2 b over five years

SENATE: $14.4 b increase in FY2002, with Title I funding alone rising to $15 b in FY02 and increasing $132 b over ten years

SOURCE: H.R. 1, as engrossed by the House, May 23, 2001; H.R. 1, as engrossed by the Senate, June 14, 2001; "Education Bills at a Glance," *New York Times* (June 15, 2001); "Education Bills Compared," *CQ Weekly* (June 30, 2001): 1560; Valerie Strauss, "Lawmakers Struggle to Define Failing Schools," *Washington Post* (August 28, 2001): A8.

Table 3. Defining Adequate Yearly Progress (AYP) in the No Child Left Behind Act

• Based on 2001-02 school year data, states set the initial starting point at the higher of two proficiency levels:

(1) the percentage of students at the proficient level in the lowest scoring subgroup of students;
(2) the percentage of students proficient at the 20th percentile of state achievement

• The state must raise its bar within two years, and at least every third year thereafter; increases must be in equal increments. All students must be at least proficient with regard to state academic standards within twelve years and must make "continuous and substantial improvement." Beyond assessments, AYP formula must include drop-out rates for secondary school students and one state-determined indicator for elementary school students.

• For schools to make AYP, both the overall population and each disaggregated subgroup (racial/ethnic groups, low-income, LEP, and students with disabilities) must meet state targets. 95% of each subgroup must take the relevant assessments. Scores may be rolling averages across the current and prior two school years. Scores may also average across grades within a school.

• If the overall population makes AYP but one or more subgroups do not, the school will still make AYP if the proportion of students in the those subgroups rated below proficiency declines by ten percent or more (the so-called "safe harbor" provision)

SOURCE: Conference Report for H.R. 1 (December 13, 2001); "In Summary," *Education Week* (April 3, 2002), p. 24.

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